

c. Authentication. The board president and recorder must authenticate the record of proceedings by reviewing and signing it; see MARCORSEPMAN, paragraph 6320 if the president and recorder are unavailable for signature.

9. Forwarding Report

a. Forwarding to CA. The senior member of the board forwards to the CA the original report of the board.

b. CA's Letter of Recommendation and Endorsement

(1) Format. The CA will forward the report via the chain of command to the separation authority with a letter/endorsement in the format of figure 5-9 of this SOP. To prevent duplication, do not include—as enclosures to the command endorsements—copies of any documents which are already included with the board's record or report.

(2) Content. The CA may comment on the respondent or the proceedings.

(a) Comment by defense. The CA's endorsement should include comments from the defense counsel on the board, if any, and the response by the recorder to those comments.

(b) Unsatisfactory participation. In unsatisfactory participation cases, the CA must comment on the matters noted at paragraph 5101.1c of this SOP if the board did not cover them.

(c) Agreement or disagreement with board decisions. The CA may agree or disagree with the board's findings and recommendations. Before doing so, the CA should review the separation authority's options (paragraph 6309 of the MARCORSEPMAN), especially in those cases in which a board recommends retention (paragraph 6309.2 of MARCORSEPMAN).

5103. RETURN OF PACKAGES BY MARFORRES FOR CORRECTION. The policy of MARFORRES SJA is to correct defective packages by making direct contact with the originating unit. Packages may also be returned directly to the unit by use of the "return to draft" option in MCEAS. MCEAS will generate an e-mail allowing the SJA an opportunity to notify the unit of deficiencies.

5104. ACTION BY THE DISCHARGE AUTHORITY. The separation authority endorses every administrative discharge proceeding. If the separation authority approves a discharge, the discharge package will be forwarded electronically to CMC (MMSB-20) for inclusion in the respondent's official records. The units will receive an email from MCEAS informing them that the discharge has

been approved by the separation authority. The unit will acquire the discharge letter under the "final action" tab in MCEAS. Once the separation authority has approved a discharge, the package/file will be automatically stored under the "closed" tab in MCEAS. Copies of the completed recommendation will be maintained by the Marine's unit in accordance with SECNAVINST 5212.5\_.

# MARFORRES LEGAL SOP

## CHAPTER 5

### ENLISTED ADMINISTRATIVE DISCHARGES

#### SECTION 2: ADMINISTRATIVE PROCEDURES IN SPECIFIC TYPES OF CASES

##### 5200. UNSATISFACTORY PARTICIPATION IN THE READY RESERVE

1. MARCORSEPMAN. See paragraph 6213.

2. Least Favorable Characterization. OTH.

3. Board Entitlement. Since OTH is the least favorable characterization that can be received, all Marines, regardless of time in service or rank, processed for separation due to unsatisfactory participation are entitled to an Administrative Separation Board.

4. Additional Guidance

a. Definition of Unsatisfactory Participation. Reservists may be processed for discharge for unsatisfactory participation in the Ready Reserve for any of the reasons noted in Chapter 3 of the MCRAMM (MCO P1001R.1). For SMCR members serving under their initial enlistment agreement ("SMCR personnel with an EOS"), see MCRAMM, paragraph 3301.

(1) Unsatisfactory Participation Due to Excessive Unexcused Absences from Drills. Unsatisfactory participation is the basis when the Marine has missed a **minimum** of nine unexcused absences from drills within a 12-month period **AS OF OR BEFORE THE DATE OF THE NOTIFICATION LETTER**. MCTFS screen D984 will be included as supporting documents in MCEAS in all Unsatisfactory Participant cases.

(2) Commuting Distance. Paragraph 3104.4 of the MCRAMM imposes limitations on commuting distances for mandatory participants. A Marine initially recruited into the Reserves whose commuting distances exceed those limitations must have a waiver. If the Marine does not have a waiver and misses drills, the command may process the Marine under paragraph 6204.2 (erroneous enlistment) or 6204.3 (fraudulent enlistment) of the MARCORSEPMAN instead of paragraph 6213.

b. SMCR Members NOT Serving under Their Initial Enlistment Agreement ("SMCR personnel without an EOS"). Unsatisfactory participation is the basis when the Marine has unexcused absences from drill or is otherwise an unsatisfactory participant as defined at paragraph 3301 of the MCRAMM. Instead of being administratively discharged from the SMCR for unsatisfactory participation, the Marine, not serving under their initial enlistment agreement, may request transfer to the IRR. See paragraph 5100.1F(2) of this SOP when the Marine requests transfer to the IRR.

c. Counseling. The MARCORSEPMAN does not require administrative reduction, letters concerning unsatisfactory participation, or 6105 counseling before initiating discharge for unsatisfactory participation. However, in unsatisfactory participation cases, each Separation Authority in MARFORRES requires that the command letter of recommendation contain the information found at paragraph 5101.1c of this SOP. Although not a prerequisite for discharge for unsatisfactory participation, 6105 counseling entries can be used to assist in providing this information.

d. Effect of TNPQ/NPQ. See Appendix D of Marine Corps Order P5000.14C (Marine Corps Administrative Procedures) for an overview of procedures for Marines who are temporary not physically qualified (TNPQ) or not physically qualified (NPQ).

## 5201. MISCONDUCT

### 1. MARCORSEPMAN

a. General. See paragraph 6210. The most frequently used bases here are minor disciplinary infractions, pattern of misconduct, drug abuse, and commission of a serious offense.

b. Characterization. The least favorable is OTH.

### **WARNING FOR RESERVISTS:**

(1) Restrictions on general or other than honorable characterization. Under paragraph 1004.4d of the MARCORSEPMAN, honorable is the standard characterization for discharge based on conduct in the civilian community by a Reservist not on active duty or active duty for training at the time of the conduct. Paragraph 1004.4d imposes the following thresholds for general and OTH characterization in these cases:

(a) General: the conduct must adversely affect overall effectiveness of the Marine Corps, including military morale and efficiency;

(b) OTH: the conduct must be "service related," i.e., directly affect performance of military duties. Commands must provide evidence meeting these requirements if recommending general or OTH characterization when the "serious offense" is conduct in the civilian community by a Reservist not on active duty or active duty for training at the time of the conduct. Paragraph 1004.4d is irrelevant, however, if general characterization is appropriate based on service record alone—that is without regard to the conduct (example: proficiency and conduct marks which require a general discharge in any case).

(2) Alternative method of processing. If a Reservist has committed misconduct in the civilian community and has also missed drills (usually due to confinement), the command could process the Marine under paragraph 6213 of the MARCORSEPMAN for unsatisfactory participation. If processed under 6213, the Marine may receive a general or other than honorable discharge without regard to the limitations of paragraph 1004.4d. If the Marine continues to attend drills, then the only basis is commission of a serious offense, and the package must include information satisfying paragraph 1004.4d MARCORSEPSMAN if the command recommends a general or other than honorable discharge. Contact MARFORRES SJA for further guidance.

## 2. Minor Disciplinary Infractions

a. MARCORSEPMAN. See paragraph 6210.2.

b. Least Favorable Characterization. When a Marine is processed for minor disciplinary infractions the least favorable characterization is OTH. See the warning at paragraph 5201.1b of this SOP concerning Reservists.

c. Board Entitlement: All cases since OTH is the least favorable characterization that can be received.

d. Additional guidance

(1) Nature of Misconduct. The minimum of three instances of misconduct contemplated by this specific basis for discharge must occur in the **current enlistment** and must be offenses which have been or could have been referred to NJP. The misconduct, however, need not have been referred to a court-martial, civilian court, or NJP. At a minimum, the conduct must be documented on page 11 of the SRB. Other documentation such as fitness reports, letters, or law enforcement reports should also be included as an enclosure to the command letter of recommendation or as an exhibit in the board's record. When multiple offenses have been the subject of one NJP, they remain separate offenses for the purpose of determining eligibility for processing under paragraph 6210.2.

(2) Counseling. Counseling done in accordance with MARCORSEPMAN, paragraph 6105 and recorded properly in the SRB is mandatory before initiating discharge under this section and should be done after the first instance of misconduct. See paragraphs 6105.3 and 6105.4 for guidance on determining time limits for overcoming deficiencies and if deficiencies have been overcome. Note the requirement in 6105.5 for a "reasonable relation" between the counseling entry and the recommended basis for discharge.

### 3. Pattern of Misconduct

- a. MARCORSEPMAN. See paragraph 6210.3.
- b. Least Favorable Characterization. When a Marine is processed for pattern of misconduct the least favorable characterization is OTH. See the warning at paragraph 5201.1b of this SOP concerning Reservists.
- c. Board Entitlement. All cases since OTH is the least favorable characterization that can be received.
- d. Additional Guidance

(1) Nature of Misconduct. The two instances of misconduct contemplated by this specific basis for discharge must occur within one enlistment; they need not have been referred to a court-martial, civilian court, or NJP. The infractions may be minor or more serious. There must be discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline. A Marine may be separated under this basis when there is a pattern of more serious infractions than in paragraph 6210.2. At a minimum, the conduct must be documented on page 11 of the SRB; other documentation, such as fitness reports, letters, or law enforcement reports, should also be included as an enclosure to the command letter of recommendation or as an exhibit in the board's record.

(2) Counseling. Counseling done in accordance with MARCORSEPMAN, paragraph 6105 and recorded properly in the SRB is mandatory before initiating discharge under this section and should be done after the first instance of misconduct. See paragraphs 6105.3 and 6105.4 for guidance on determining time limits for overcoming deficiencies and if deficiencies have been overcome. Note the requirement in 6105.5 for a "reasonable relation" between the counseling entry and the recommended basis for discharge.

#### 4. Commission of a Serious Offense (Military or Civilian)

a. MARCORSEPMAN. See paragraph 6210.6.

b. Least Favorable Characterization. When a Marine is processed for commission of a serious offense the least favorable characterization is OTH. See the warning at paragraph 5201.1b of this SOP concerning Reservists.

c. Board Entitlement. All cases since OTH is the least favorable characterization that can be received.

d. Additional Guidance

(1) Definition of "serious offense." Paragraph 6210.6 of the MARCORSEPMAN defines "serious offense." The offense can be military or civilian and it need not have been the subject of NJP (NJP is usually inappropriate for a "serious offense" anyway) or a military or civilian court conviction before the Marine can be separated for committing the offense. The offense can be the basis for discharge even if military or civilian authorities do not prosecute. However, see MARCORSEPMAN, paragraph 6106 which limits discharges based on offenses for which the Marine was found not guilty.

(2) Evidence. Enclosures to the command letter of recommendation or exhibits in the board's record must include detailed information which proves by a preponderance of the evidence that the member in fact committed a serious offense.

(3) Serious Offense vs. Civilian Conviction. Marines convicted by civilian authorities should be processed for commission of a serious offense to eliminate the additional procedures required under misconduct (civilian conviction).

(4) Counseling. Counseling in accordance with MARCORSEPMAN, paragraph 6105, is not required.

#### 5. Civilian Conviction

a. MARCORSEPMAN. See paragraph 6210.7.

Least Favorable Characterization. When a Marine is processed for civilian conviction the least favorable characterization is OTH. See the warning at paragraph 5201.1b of this SOP concerning Reservists.

b. Board Entitlement. All cases since OTH is the least favorable characterization that can be received.

c. Additional Guidance. In most cases commands should not use this as the basis for a discharge. Use instead misconduct (commission of a serious offense). Any command desiring to use this basis must first contact the MARFORRES SJA.

## 6. Sexual Harassment

a. MARCORSEPMAN. See paragraph 6210.8.

b. Least Favorable Characterization OTH. See the warning at paragraph 5201.1b concerning Reservists.

c. Board Entitlement. All cases since OTH is the least favorable characterization that can be received.

### d. Additional Guidance

(1) Basis for Discharge. This is not a separate basis for discharge. The basis for separation for sexual harassment will be either commission of a serious offense, minor disciplinary infractions, or pattern of misconduct.

(2) Definition of "sexual harassment." See MARCORSEPMAN, paragraph 6002.19. Note that conduct must be connected to employment or the work place.

(3) Mandatory Processing. MARCORSEPMAN, paragraph 6210.8a, requires processing in certain "substantiated" cases involving sexual harassment. Paragraph 6210.8b defines "substantiated."

(4) Counseling. Counseling is not required if the basis is commission of a serious offense, but is required if the basis is minor disciplinary infractions or pattern of misconduct. See paragraphs 6105.3 and 6105.4 for guidance on determining time limits for overcoming deficiencies and if deficiencies have been overcome. Note the requirement in 6105.5 for a "reasonable relation" between the counseling entry and the recommended basis for discharge.

## 7. Drug Abuse

a. MARCORSEPMAN. See paragraph 6210.5.

b. Least Favorable Characterization. When a Marine is processed for drug abuse the least favorable characterization is OTH. See the warning at paragraph 5201.1b of this SOP concerning Reservists.



c. Board Entitlement. All cases since OTH is the least favorable characterization that can be received.

d. Additional Guidance

(1) Documentation. Drug abuse cases must document drug abuse as defined by paragraph 6210.5. If a positive urinalysis is the evidence for drug abuse, the factual basis should allege possession and use to cover all bases. Also, copies of the following must be included as supporting documents in MCEAS and if applicable in the board's record: (1) the message from the Department of Defense (DOD) certified drug testing laboratory confirming the positive urinalysis; (2) the Urine Sample Custody Document (DD Form 2624); and (3) the page(s) from the command's ledger register showing the respondent's signature at the time the sample was obtained.

(2) Mandatory Processing. MARCORSEPMAN, paragraphs 6210.5a and 6210.5b, require processing for any involvement with drugs, with the following exceptions (1) the offense has been adjudicated at a GCM or SPCM, for which the sentence approved by the CA includes a punitive discharge (suspended or unsuspended), or (2) the limitations of paragraph 6106.1 of MARCORSEPMAN apply.

(3) Counseling. Counseling under MARCORSEPMAN, paragraph 6105 is **not** required before initiating discharge proceedings under this section. However, paragraph 4006.3 of the IRAM requires page 11 documentation of confirmed instances of drug abuse.

(4) Characterization: WARNING FOR RESERVISTS. If the drug abuse is by a Reservist not on active duty or active duty for training at the time of the abuse, paragraph 1004.4d of the MARCORSEPMAN prohibits general or other than honorable characterization, unless certain conditions are met. See previous discussion at paragraph 5201.1b of this SOP.

(a) Cases not based on urinalysis. The command must supply information satisfying the requirements of paragraph 1004.4d MARCORSEPSMAN if the command recommends a general or other than honorable discharge.

(b) Cases based on urinalysis of sample collected while the Marine is on active or inactive duty. In the typical case, a Reservist submits a urine sample while on active duty, inactive duty training or annual training. The urinalysis indicates drug use, but the command cannot determine when the Marine used or possessed the drug. Use and possession may have occurred while the Marine was on duty but more likely preceded

his entry into a duty status. If the command cannot prove the drugs were used or possessed while the Marine was in a duty status, then the following rules apply:

(c) THC, BZE or Methamphetamines are detected. THC indicates use of marijuana. BZE indicates use of cocaine. The command may recommend a general or OTH discharge without regard to 1004.4d since metabolites of THC, BZE and Methamphetamines in urine are illegal or controlled, therefore making a Marine's possession in his or her body illegal at any time.

8. Participation in Supremacist or Extremist Organizations

a. MARCORSEPMAN. See paragraph 6210.9.

b. Least Favorable Characterization. The least favorable characterization is OTH if the basis is any form of misconduct; general or honorable if the basis is Secretarial plenary authority. See the warning at paragraph 5201.1b concerning Reservists of this SOP.

c. Board Entitlement: The Marine is entitled to a board if the basis is any form of misconduct; the Marine is not entitled to a board if the basis is Secretarial plenary authority.

d. Additional Guidance. **CALL SJA MARFORRES FOR GUIDANCE.**

(1) Basis for Discharge. This is not a separate basis for discharge. The basis will be either commission of a serious offense, minor disciplinary infractions, pattern of misconduct, or Secretarial plenary authority. (see paragraph 6214, MARCORSEPMAN).

(2) Mandatory Processing. MARCORSEPMAN, paragraph 6210.9, requires processing after the first "substantiated" incident meeting the criteria in paragraph 6210.9a. Paragraph 6210.9b defines "substantiated."

(3) Counseling. Counseling is not required if the basis is commission of a serious offense or Secretarial plenary authority. Counseling is required if the basis is minor disciplinary infractions or pattern of misconduct. See paragraphs 6105.3 and 6105.4 for guidance on determining time limits for overcoming deficiencies and if deficiencies have been overcome. Note the requirement in 6105.5 for a "reasonable relation" between the counseling entry and the recommended basis for discharge.

9. Sexual Perversion. See MARCORSEPMAN, paragraph 6210.4. This is not a basis for discharge; conduct meeting the definition of "sexual perversion" in MARCORSEPMAN, paragraph 6002.21, must be processed as commission of a serious offense (MARCORSEPMAN, paragraph 6210.6) or civilian conviction (MARCORSEPMAN, paragraph 6210.7).

#### 5202. UNSATISFACTORY PERFORMANCE

1. MARCORSEPMAN. See paragraph 6206.

2. Least Favorable Characterization. When a Marine is processed for unsatisfactory performance the least favorable characterization is general under honorable conditions. See the warning at paragraph 5201.1b of this SOP concerning Reservists.

3. Board Entitlement. Only if the Marine has 6 or more years of active and inactive service.

#### 4. Additional Guidance

a. Counseling. Counseling in accordance with MARCORSEPMAN, paragraph 6105 and recorded properly in the SRB is mandatory before initiating discharge under this section. **PROPER 6105 COUNSELING ABOUT A PFT FAILURE SHOULD BE RECORDED IN THE SERVICE RECORD BOOK ON THE SAME DAY THE MARINE FAILS THE PFT.** See paragraphs 6105.3 and 6105.4 for guidance on determining time limits for overcoming deficiencies and if deficiencies have been overcome. Note the requirement in 6105.5 for a "reasonable relation" between the counseling entry and the recommended basis for discharge.

b. PFT Failures. For PFT failures, the command letter of recommendation must include copies of the PFT score sheets which clearly document that the Marine failed the PFT.

c. Other Basis for Discharge. If the Marine can be processed for unsatisfactory participation (missing drills), the command should use that basis instead of unsatisfactory performance.

#### 5203. WEIGHT CONTROL FAILURE

1. MARCORSEPMAN. See paragraph 6215.

2. Least Favorable Characterization. When a Marine is processed for weight control failure the least favorable characterization is general under honorable conditions. See the warning at paragraph 5201.1b of this SOP concerning Reservists.

3. Board Entitlement. Only if the Marine has 6 or more years of active and inactive service.

4. Additional Guidance. Marines who fail to meet weight standards in MCO P6100.12 may be processed for discharge for weight control failure.

a. Other Bases for Discharge. This basis will **not** be used if another basis (such as misconduct or unsatisfactory participation or unsatisfactory performance) is available. See paragraph 6215, MARCORSEPMAN.

b. Enclosures to Command Recommendation for Discharge. The following must be included:

(1) The Request for Preliminary Medical Evaluation in appendix D enclosure (1) to MCO P6100.12. Complete through fifth endorsement in accordance with MARCORSEPSMAN. An appropriately credentialed health care provider (ACHCP) must sign the first endorsement. The ACHCP must be a medical officer, contract physician, nurse practitioner, or physician's assistant. The signature of a corpsman is **not** sufficient. The signature block will state clearly the name, grade, armed force, medical title, and organization (as appropriate) of the ACHCP who diagnosed the cause of the respondent's deficiency.

(2) A copy of the Weigh-in Progress Chart. If the respondent received an extension beyond the initial evaluation period, attach a statement from the officer who approved the extension, indicating the date approved and length of extension. An ACHCP must reevaluate the Marine at the end of the extension.

c. Counseling

Basic Requirement. Counseling done in accordance with MARCORSEPMAN, paragraph 6105 and recorded properly in the SRB is mandatory before initiating discharge under this section. **PROPER 6105 COUNSELING ABOUT THE WEIGHT PROBLEM WILL BE DONE AND RECORDED IN THE SERVICE RECORD BOOK ON THE SAME DAY THE MARINE IS INITIALLY ASSIGNED TO WEIGHT CONTROL.** See paragraphs 6105.3 and 6105.4 for guidance on determining time limits for overcoming deficiencies and if deficiencies have been overcome. Note the requirement in 6105.5 for a "reasonable relation" between the counseling entry and the recommended basis for discharge.

d. Time Periods. Follow closely the time periods and extensions in MCO P6100.12 for losing weight. Ensure that reevaluation is conducted 6 months after the initial assignment to weight control.

5204. HOMOSEXUAL CONDUCT

1. MARCORSEPMAN. See paragraph 6207.
2. Least Favorable Characterization. When a Marine is processed for homosexual conduct the least favorable characterization is OTH. See the warning at paragraph 5201.1b of this SOP concerning Reservists.
3. Board Eligibility. All cases regardless of length of service or possible characterization. See MARCORSEPMAN, Appendix L, figure L-10 and figure 5-15 of this SOP for sample Administrative Discharge Board Report of Findings and Recommendations.
4. Additional Guidance. Commanders shall contact SJA, MARFORRES, before initiating any formal or informal fact-finding inquiry or administrative separation procedures concerning homosexual conduct. This contact should be made immediately upon learning of conduct that may form the basis for such a discharge.

5205. PERSONALITY DISORDER

1. MARCORSEPMAN. See paragraph 6203.3.
2. Least Favorable Characterization. When a Marine is processed for personality disorder the least favorable characterization is general under honorable conditions. See the warning at paragraph 5201.1b of this SOP concerning Reservists.
3. Board Entitlement. Only if the Marine has 6 or more years of active and inactive service.
4. Additional Guidance
  - a. Evidence. Two forms of documentation are required in all cases. Paragraph 6203.3 requires diagnosis by a psychiatrist (or psychologist) and nonmedical evidence. Written nonmedical evidence must be submitted to show specific examples of how the Marine is unable to function in the Marine Corps or Marine Corps Reserve. Before sending a Marine for mental health evaluation, review SECNAVINST 6320.24A and DoD Directive 6409.1.
  - b. Other Bases for Discharge. Do not use personality disorder when discharge is warranted for misconduct or unsatisfactory performance.
  - c. Counseling. Counseling done in accordance with MARCORSEPMAN, paragraph 6105 and recorded properly in the SRB is mandatory before initiating discharge under this section. However, counseling is not required if a qualified medical

officer concludes the Marine is suicidal or a danger to himself or to others. See paragraphs 6105.3 and 6105.4 for guidance on determining time limits for overcoming deficiencies and if deficiencies have been overcome. Note the requirement in 6105.5 for a "reasonable relation" between the counseling entry and the recommended basis for discharge.

## 5206. DEFECTIVE ENLISTMENT AND INDUCTION

### 1. General Information

#### a. Erroneous Enlistment/Reenlistment

(1) MARCORSEPMAN. See paragraph 6204.2.

(2) Least Favorable Characterization. When a Marine is processed for erroneous enlistment/reenlistment the least favorable characterization is honorable or uncharacterized. See the warning at paragraph 5201.1b of this SOP concerning Reservists.

(3) Board Entitlement. Only if the Marine has 6 or more years of active and inactive service.

(4) Additional Guidance. A CO or I-I who receives credible information that a member has entered the Marine Corps or Marine Corps Reserve erroneously will thoroughly inquire into the matter and will contact the recruiting office involved. A complete report will be promptly made to the CG, MCRC via MARFORRES.

#### b. Fraudulent Enlistment

(1) MARCORSEPMAN. See paragraph 6204.3.

(2) Least Favorable Characterization. When a Marine is processed for fraudulent enlistment the least favorable characterization is OTH. Characterization of service under OTH may only be issued when the fraud involves concealment of a prior separation in which service was not characterized as honorable. See the warning at paragraph 5201.1b of this SOP concerning Reservists.

(3) Board Entitlement. The administrative board procedure of paragraph 6304 of MARCORSEPMAN must be used if characterization of service under OTH is desired, i.e., when there is a concealment of a prior separation in which service was not characterized as honorable. In all other cases, the notification procedure of paragraph 6303 will be used and service will be characterized as honorable, general (under honorable conditions), or uncharacterized.

5207. REQUESTS FOR DISCHARGE BY REASON OF DEPENDENCY OR HARDSHIP. Marines may request to be separated by reason of dependency or hardship in accordance with MARCORSEPMAN, paragraph 6407. Requests for discharge will be forwarded to appropriate Separation authority 4<sup>th</sup> MAW, 4<sup>th</sup> MarDiv, 4<sup>th</sup> FSSG, MOBCOM, and COMMARFORRES for review. The forwarding endorsement must comment upon the mobilization potential of the Marine applying for discharge under this section.

5208. REQUESTS FOR DESIGNATION AND DISCHARGE AS A CONSCIENTIOUS OBJECTOR

1. MARCORSEPMAN. See paragraph 6409.
2. Additional Guidance. See MCO 1306.16. A Reservist who applies for conscientious objector status will not normally be ordered to involuntary active duty until the application is resolved. Proper resolution of the application is best accomplished within the Reserve unit. If a Reservist applies for conscientious objector status after notification of the commanding officer's intent to recommend involuntary active duty, and in the commanding officer's best judgment the application is without merit and simply a means to avoid involuntary active duty, the CO may recommend to the CMC (M&RA) that the application be held in abeyance, and the Marine ordered to active duty. When the Marine reports as ordered, the application may be renewed and processed under MCO 1306.16. Note: During periods of mobilization, CMC (M&RA) may amplify or modify the existing procedures outlined in MCO 1306.16.

5209. SEPARATION IN LIEU OF TRIAL BY COURT-MARTIAL

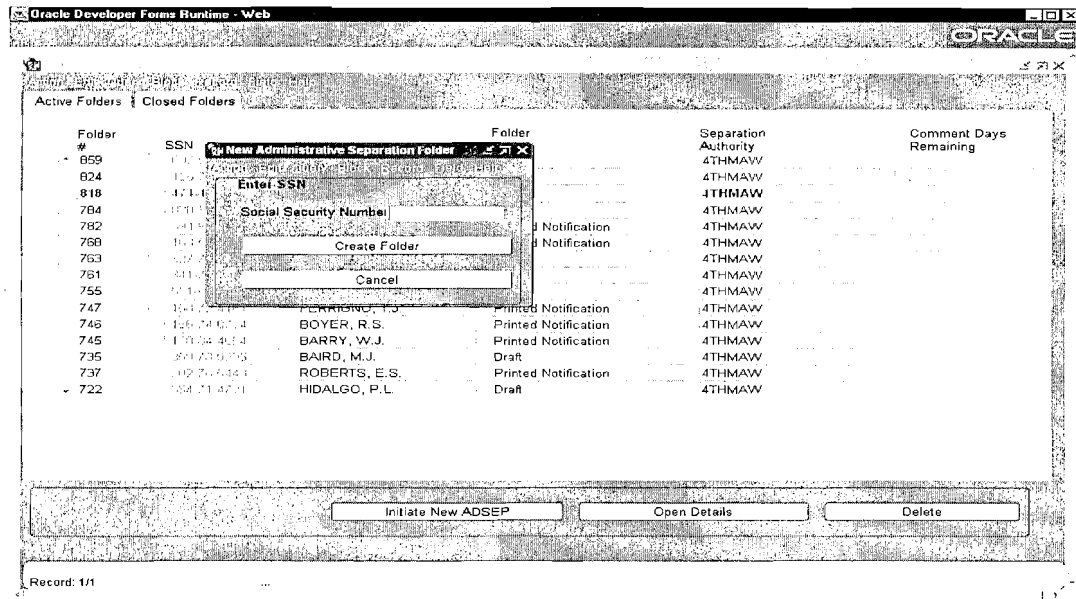
1. MARCORSEPMAN. See paragraph 6419.
2. Least Favorable Characterization. OTH.
3. Additional Guidance. A Marine cannot apply for this discharge unless charges have been preferred (sworn) for an offense for which a punitive discharge is authorized. Also, the Marine must be afforded an opportunity to consult with qualified counsel concerning the request. Unless the Marine waives the right to consult counsel, the defense counsel must also sign the request.

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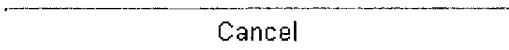
**STEP 1: CREATE NEW ADSEP FOLDER IN MCEAS**

1. From the ADSEP Folders List View Screen, Click the *Initiate New ADSEP* button. This will open the New ADSEP Folder Dialog.

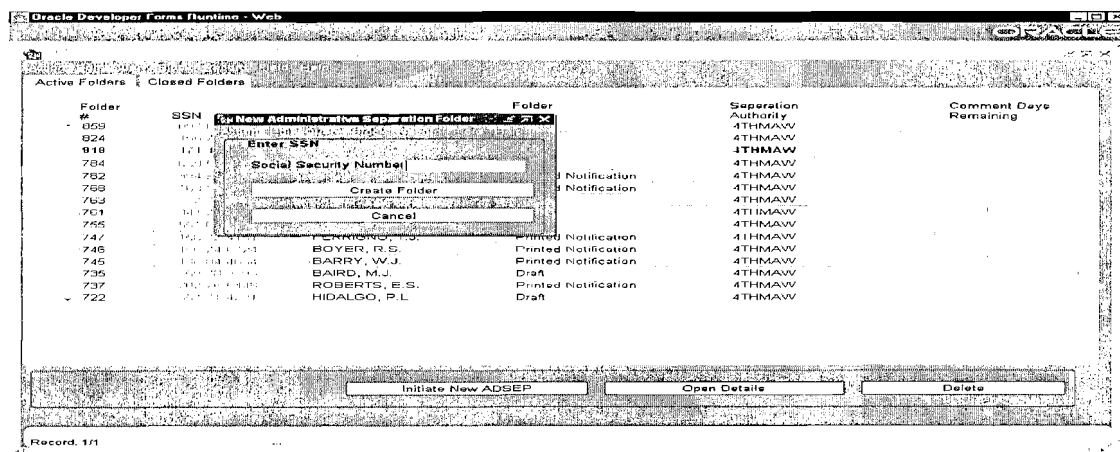


2. Enter the SSN of the member who is being processed for Administrative Separation. **If you decide not to proceed with this ADSEP, go to task #3. Otherwise, go to task #4.**

3. Click the *Cancel* button.



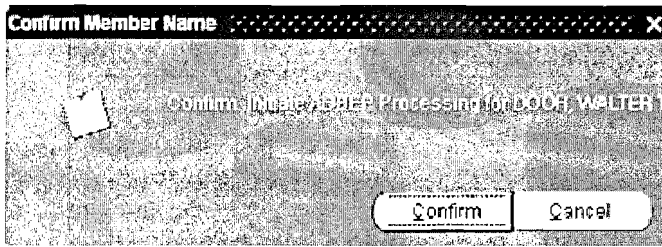
4. Click the *Create Folder* button.



A confirmation screen will appear.

FIGURE 5-1 -- MCEAS ADMINISTRATIVE SEPARATION FOLDER

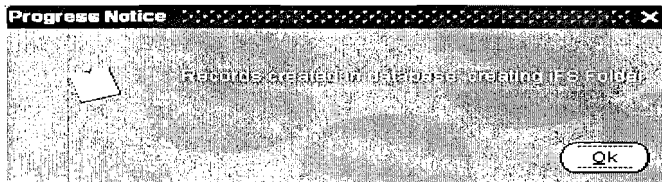
## MARFORRES LEGAL SOP



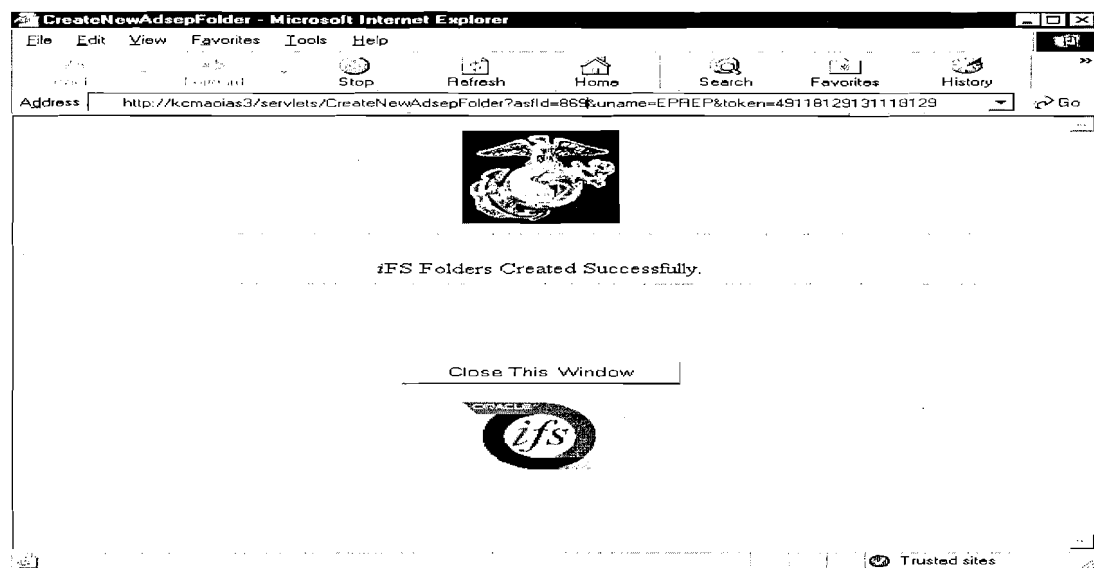
If the name is not correct, go to task #5. Otherwise, go to task #6.

5. Click the *Cancel* button. Go to task #2.

6. Click the *Confirm* button. MCEAS will create a database record. Once this is complete, you will get a progress notice. Then the system will continue and build the iFS Folder.



7. Click *Ok*. The system will create the iFS Folders and the following browser window will open.



8. Click the *Close This Window* Button. Once the system is finished processing, the Detail Screen will open to the new record.

FIGURE 5-1 -- MCEAS ADMINISTRATIVE SEPARATION FOLDER

# MARFORRES LEGAL SOP

## 9. Continue with Prepare and Send the Notification

**Administrative Separation Folder**

Folder # 1869 SSN 1-457163 Respondent JONAS WALTER

Folder Status 1001 Strength Category 10 Authority GCMCA

Separating Auth Headquarters Battalion, Marine Forces Reserve

Upload Document to IFS  
Open Documents Folder  
Member Retired  
Transferred to IRR

Personnel Data | Separation Bases | Notification | Board Results | Commander's Letter | Endorsements | Legal Reviews | Final Action

Custody  
☐ MILITARY ☐ CIVILIAN ☐ FOREIGN ☒ N/A

Retirement Request  
☐ Retirement Eligible  
☐ Retirement Requested

Transfer to IRR  
☐ Res. Non-Obligor  
☐ Req. Tr IRR (Notify CG, MCRSC)

Assigned Command  
RUC 1016 MCC 102 Headquarters Battalion, Marine Forces Reserve  
City DE WILMINGTON State DE

Billet 1001 Primary MOS 1001  
Rank 1001 Date of Rank 1001 Component 1001 Component Code  
Active 1001 Reserve 1001

Expiration of Current Contract  
Active 1001 Reserve 1001 End of Active Service 1001 Record Status  
Active 1001 Reserve 1001

Pay Entry Base Date 1001 Date of Birth 1001 Security Clearance 1001

More ...

Record: 1/1

## **STEP 2: SERVICE OF NOTIFICATION, ACKNOWLEDGEMENT OF RIGHTS, AND BCNR/NDRB**

1. Service in person is the preferred method of service for both Active duty and Reserve Marines.

a. IF SERVICE BY PERSONAL CONTACT IS UNSUCCESSFUL, SEND NOTIFICATION BY CERTIFIED MAIL (RESTRICTED DELIVERY, RETURN RECEIPT REQUESTED) TO THE ADDRESS MOST RECENTLY FURNISHED BY THE MARINE FOR RECEIPT OR FORWARDING OF OFFICIAL MAIL.

b. RECORD SERVICE PROPERLY FOR SUCCESSFUL SERVICE BY PERSONAL CONTACT AT THE DRILL SITE, COMPLETE FIGURE 5-6 AND INCLUDE IT AND FIGURE 5-7 AS ENCLOSURES TO THE COMMAND ENDORSEMENT.

2. FOR SERVICE BY MAIL, COMPLETE FIGURE 5-6 AND INCLUDE IT AS AN ENCLOSURE TO THE COMMAND ENDORSEMENT ALONG WITH THE WHITE POSTAL MAIL RECEIPT (PS FORM 3800); GREEN CARD (PS FORM 3811); AND MAILING ENVELOPE WITH POSTAL ANNOTATIONS (IF THE ENVELOPE WAS RETURNED AS UNCLAIMED OR UNDELIVERABLE).

3. WAIT THE PROPER LENGTH OF TIME BEFORE CERTIFYING MCEAS FOLDERS

a. Certify after whichever of the following occurs first:

FIGURE 5-1 -- MCEAS ADMINISTRATIVE SEPARATION FOLDER

## MARFORRES LEGAL SOP

--AOR returned before time expires; or  
--package is returned unclaimed; or  
--the time for responding expires.

b. Time limits for returning the AOR:

- (1) **Service made in person:** 2 days.
- (2) **Service by mail or in person:** 20 days from the date of signature on the green card
- (3) **Service in person or by mail for a Marine IHCA:** 30 days from date the Marine signed a receipt (if service in person) or from the date of signature on the green card (if service was by mail).

4. ANNOTATE THE AOR (COMMAND USE ONLY SECTION) IF (1) SERVICE WAS BY MAIL AND THE MARINE RECEIVED THE PACKAGE BUT DID NOT RETURN OR ACKNOWLEDGE RECEIPT OF IT OR (2) THE MARINE DID NOT SIGN THE AOR OR SELECT THE RIGHTS ON THE AOR.

5. IF THE RESPONDENT REQUESTS A BOARD, CONVENE A BOARD OR FORWARD THE PACKAGE TO THE PROPER CONVENING APPOINTING AUTHORITY.

### **STEP 3: HOW TO UPLOAD SUPPORTING DOCUMENTATION**

1. First, an iFS folder needs to be created.
2. Upload a scanned document. Use the *Scanned Docs to iFS* button to upload a scanned document to iFS. An *Upload Document to iFS* window opens up in your Internet Browser (i.e., Netscape). The *Scanned Docs to iFS* button should not be used if the iFS folder is not created. The *Case ID* textbox displays the default ADSEP folder number, and *iFS Parent Folder* displays the directory for the parent folder.

**Upload Document to iFS**

Case ID:

iFS Parent Folder :

Choose iFS Sub Folder:

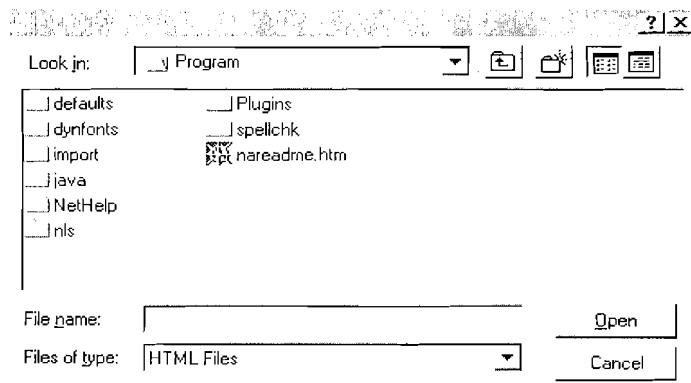
Locate File:

Select the scanned document using the browse tool.  
Click on the *Browse...* button.

FIGURE 5-1 -- MCEAS ADMINISTRATIVE SEPARATION FOLDER

**Browse...**

The *File Upload* dialog window is displayed to assist the user in his/her search for the scanned document. When the document is found, click on the *Open* button on the dialog window, or do an [ALT]+[O].



The file name of the selected scanned document will be displayed in the *Upload Document to iFS* window.

**Locate File:** C:\Tutor11i\Htm1\PRE **Browse...**

**Select the sub folder to upload to.** The drop-down list, *Choose iFS Sub Folder*, offers two options:

- NOS
- *Supporting\_docs*

**Upload the scanned document.** Click on *Upload File* button.

**Upload File**

The file uploads and a confirmation message is displayed on the screen.

Document 'ohn review doc' uploaded successfully to iFS folder '/home/MCEAS/ADSEP\_171/NOS'

**Close This Window**

**Return to MCEAS application.** Click on the *Close This Window* button.

FIGURE 5-1 -- MCEAS ADMINISTRATIVE SEPARATION FOLDER

## MARFORRES LEGAL SOP

Close This Window

3. Open the Internet File System to view iFS documents.

### **STEP 4: PREPARING FOR A BOARD. (If no board, skip to 5)**

1. Prepare appointing order (see Figure 5-10)

- a. Name members IAW MARCORSEPMAN 6315.1-**IMPORTANT**
- b. Appointing authority/Reserve CO NOT member of board
- c. Name recorder/defense counsel
- d. Obtain defense counsel by sending RLS to closest Naval Legal Service Office or Marine Corps Legal Service Support Section.
- e. Only one signature required: PERSONAL signature of convening authority or officer "acting"

2. Notify members, respondent, recorder, and defense counsel of date, time, and place of board; notify respondent by letter sent certified mail (see Figure 5-11)

3. Recorder preparation:

- a. Copies of exhibits for each member and counsel for respondent
- b. Provide hearing guide for members to use (Figure 5-12).
- c. Notify witnesses.
- d. Prepare findings and recommendations worksheet (Figure 5-14 or 5-15).
- e. Tape record proceeding or someone to take notes during hearing.
- f. Order OMPF from CMC (MMSB) if respondent is E-5 or above

4. Hold board: Use Figure 5-12 as a guide

5. Prepare REPORT of the board (see Figure 5-14 or 5-15 (homosexual conduct) and 6319 and 6320 of the MARCORSEPMAN).

6. Prepare summarized RECORD of the board hearings [record = transcript + exhibits (see Figure 5-16)].

1. See 6319 and 6320 of the MARCORSEPMAN. Include all exhibits (CLEAR COPIES, PROPERLY MARKED, and include original or copy of appointing order).

G. Administrative discharge boards review.

FIGURE 5-1 -- MCEAS ADMINISTRATIVE SEPARATION FOLDER

## MARFORRES LEGAL SOP

H. Upload all board documents and exhibits into Marines MCEAS folder. (See Step 3 of this guide)

Enter Board Review Data

Navigate to the Board Results Tab.

Direct Developer Forms Runtime - Web

Administrative Separation Folder

Folder # 0000

Folder Status: ☒ ADSEP Board Held

Separating Auth: Marine Forces Reserve

Authority: GCMCA

Strength Category:

Upload Document to if S:

Open Documents Folder

Member Retired

Transferred to Jink

Personnel Data | Separation Basics | Notification | Board Results | Commander's Letter | Endorsements | Legal Reviews | Final Action

Recommended Action

Suspend

Recommended Characterization

Record 1/1

Click the ADSEP Board Held check box.

☒ ADSEP Board Held

Select a Recommended Action, based on the report of the Board

Recommended Action

If the board recommended a period of suspension, enter this in the Suspend Text Box

Suspend

If the board recommended separation or suspension enter the boards recommendation for characterization of service.

Recommended Characterization

FIGURE 5-1 -- MCEAS ADMINISTRATIVE SEPARATION FOLDER

**STEP 5: COMPLETE COMMANDER'S LETTER TAB AND ENDORSEMENT.**

## 1. Commander's letter

The screenshot shows the Oracle Developer Forms Runtime - Web interface for the Administrative Separation Folder. The form includes the following fields and tabs:

- Folder # (000)**: 70146-5400
- Folder Status**: [ ]
- Separating Auth**: Marine Forces Reserve
- Respondent**: [ ]
- Authority**: [ ]
- Member Retired**: [ ]
- Transferred to IRR**: [ ]
- Final Action**: [ ]
- Perennial Date**: [ ]
- Separation Basis**: [ ]
- Notification**: [ ]
- Board Results**: [ ]
- Commander's Letter**: [ ]
- Endorsements**: [ ]
- Legal Reviews**: [ ]
- Final Action**: [ ]
- Finalize**: [ ]
- Cancel**: [ ]
- Return to Draft**: [ ]
- View CO's Letter**: [ ]
- Office Code (if applicable)**: [ ]
- SSIC**: 1500
- Date**: [ ]
- From**: [Commanding Officer, Headquarters Battalion, Marine Forces Reserve, 4400 DAUPHINE STREET, NEW ORLEANS, LA 70146-5400]
- To**: [Commander, Marine Forces Reserve, 4400 DAUPHINE STREET, NEW ORLEANS, LA 70146-5400]
- Subj**: [RECOMMENDATION FOR ADMINISTRATIVE DISCHARGE OF STAFF SERGEANT WALTER T. DOOR, 12545-6789 / 4421, USMCR]
- Recommended Char of Svc**: [Honorable]
- Comments**: [Member is beyond the maximum allowed height. Unfortunately, this precludes him from further useful service.]
- Comments on Respondent Statement**: [ ]
- Signature Block**: [ ]
- Record**: 1/1

a. Select the command, which will be forwarding the Letter to the Separating Authority.

From [Commanding Officer, Headquarters Battalion, Marine Forces Reserve, 4400 DAUPHINE STREET, NEW ORLEANS, LA 70146-5400]

The sending command is usually the same as the command which originated the package. However, if a board was held by a higher authority the letter is sent by the command which convened the board. (e.g., B Company initiates a package, but Third Battalion convenes the board; therefore the Commander's Letter is sent by the Third Battalion.)

b. Enter a recommended characterization of service.

Recommended Char. of Svc. [Honorable]

c. Enter comments.

Comments [Member is beyond the maximum allowed height. Unfortunately, this precludes him from further useful service.]

If the member submitted a statement, comments must be made.

d. Enter comments in response to the member's statement

Comments on  
Respondent Statement [ ]

FIGURE 5-1 -- MCEAS ADMINISTRATIVE SEPARATION FOLDER



e. Click the *Certify* Button.

Reminder: For unsatisfactory participation cases summarize efforts by the unit to contact the Marine, and return him/her to satisfactory drill status.

Oracle Developer Forms Runtime - Web

Administrative Separation Folder

Folder #

SSN

Respondent

Strength Category

Authority

Op Unit

Upload Document to IFS

Open Documents Folder

Member Retired

Transferred to IRR

Separating Auth:

Personnel Data

Separation Basis

Notification

Board Results

Commander's Letter

Endorsements

Legal Review

Final Action

Approve Endorsement

Preview Endorsements

Date

From:

To:

Readdressal ?

Recommended Action

Separate Respondent

Recommended Suspend

Recommended Char. of Svc.

Comments

Signature Block

Approval

└ Readdressal ?

Recommended Action **Separate Respondent**

Recommended Suspend

5-45

## MARFORRES LEGAL SOP

d. Choose to separate or retain Marine. If retained, the Separation Authority must recommend the number of months for suspension.

Recommended  
Char. of Svc.

e. Choose characterization of service.

Comments

f. Comment on folder after review. Comment on efforts by unit to rehabilitate Marine.

Signature Block

FC

☐ Approved

g. Once 1-6 have been completed. A preparer can choose a certifier to approve endorsement by clicking the list of values button. **A certifier must sign in and approve the endorsement.** A check will appear in the approved box.

**NOTE: MCEAS User Manual can be viewed on-line. It is located on the Main Menu options on the MCEAS main screen.**

MARFORRES LEGAL SOP

UNIT LETTERHEAD

SSIC  
Code  
Date

CERTIFIED # \_\_\_\_\_

From: Commanding Officer/Inspector-Instructor  
To: Grade, Name, SSN/MOS, Component

Subj: NOTIFICATION OF DISCHARGE PROCEEDINGS

Ref: (a) MCO P1900.16F (MARCORSEPMAN)

Encl: (1) Purpose and Scope of the NDRB and BCNR  
(2) Acknowledgment of Respondent's Rights

1. You are hereby notified that I intend to recommend to the (Separation Authority; e.g., Commanding General) that you be discharged from the U.S. Marine Corps/U.S. Marine Corps Reserve in accordance with paragraph \_\_\_\_\_ of the reference by reason of:

a. GENERAL BASIS: This will be the paragraph title, i.e., misconduct or unsatisfactory participation. If processed for more than one basis, indicate each basis separately.

b. SPECIFIC BASIS: This is the subparagraph under the title, i.e., drug abuse, or other description (example: 9 or more missed drills).

c. FACTUAL BASIS: This is the factual evidence supporting the recommendation, e.g., urinalysis of urine sample submitted 3 March 20\_\_ indicated use of cocaine. For unsatisfactory participation, list the dates and numbers of missed drills; for example: 7 Feb 20\_\_: 28 Feb 20\_\_:

2. The least favorable characterization of service which you may receive is \*\*\*. Although the (Separation Authority) will make the determination of characterization if you are separated, I am recommending you receive an [\*\*insert one: honorable; general (under honorable conditions); or other than honorable conditions] discharge. (Include the following language if applicable: Although you are FMCR/Retired List eligible, you have refused to request transfer to the FMCR/Retired List as provided in paragraph 6106.4 of the reference. If separation is approved, you may lose all retainer/retired pay and benefits).

Figure 5-2 -- Sample Notification of Discharge Proceedings for Members when an Administrative Discharge **Board IS Required.**

## MARFORRES LEGAL SOP

Subj: NOTIFICATION OF DISCHARGE PROCEEDINGS

3. You are advised that if a Marine serving in pay grade E-4 or above is administratively separated under other than honorable conditions, the Marine will be administratively reduced to pay grade E-3 effective upon discharge in accordance with paragraph 6311.8 of the reference.

4. As a result of these discharge proceedings, you have the following rights:

a. You have the right to consult with qualified counsel prior to electing or waiving any of your rights. It is in your interest to do so prior to waiving any of your rights.

b. You have the right to request a hearing before an administrative discharge board in accordance with paragraph 6304 of the reference.

c. You have the right to present written statements to the (separation authority) in rebuttal to this proposed discharge and in lieu of having a hearing.

d. You have the right to obtain copies of all documents that will be forwarded to the (separation authority) supporting this proposed discharge. Classified documents will be summarized.

e. You have the right to waive any of these rights after being afforded an opportunity to consult with counsel.

5. Should you request a hearing before an administrative discharge board, you will be afforded the following rights:

a. To appear in person before such a board or be represented by counsel if confined by civil authorities.

b. To be represented by appointed military counsel, or military counsel of your choice if available.

c. To be represented by civilian counsel if you desire and at your own expense.

d. To challenge voting members of the board or the legal advisor, if any, for cause only.

e. To testify in your own behalf, subject to the provisions of Article 31, UCMJ (Compulsory Self-Incrimination Prohibited).

Figure 5-2 -- Sample Notification of Discharge Proceedings for Members when an Administrative Discharge **Board IS Required.**

MARFORRES LEGAL SOP

Subj: NOTIFICATION OF DISCHARGE PROCEEDINGS

f. At any time during the proceedings, you or your counsel may submit written or recorded matter for consideration by the board.

g. You or your counsel may call witnesses on your behalf.

h. You or your counsel may question any witness who appears before the board.

i. You or your counsel may present argument prior to the board closing the hearing for deliberation on findings and recommendations.

j. Upon written request to the CA, to be provided a copy of the report of the board and the endorsement thereon.

k. Failure to appear at a hearing without good cause constitutes a waiver of your right to be present at the hearing.

l. You have the right to make a sworn or unsworn statement.

m. You have the right to examine evidence presented by the board, to cross examine witnesses appearing before the board, to submit evidence before the board, and to present final argument before the board.

n. Failure to respond after being afforded a reasonable opportunity to consult with counsel constitutes waiver of the rights in paragraph 6304.1d to 6304.1m of the reference.

6. If you are separated before you complete an active duty service requirement incurred because you received advanced education assistance, bonuses, or special pays, you may be required to reimburse the U.S. Government on a pro rata basis for the unserved portion of the active service requirement.

7. Information on the Navy Discharge Review Board and the Board for Correction of Naval Records is at enclosure (1).

8. You will respond in writing to this notification by completing and returning enclosure (2) within the following times after receiving the notification: two working days if you received it in person; 20 days if you received it by mail.

Figure 5-2 -- Sample Notification of Discharge Proceedings for Members when an Administrative Discharge **Board IS Required.**

MARFORRES LEGAL SOP

Subj: NOTIFICATION OF DISCHARGE PROCEEDINGS

9. **[USE WHEN RESPONDENT IS IHCA]**. Since you are confined by civilian authorities, the following modifications and additions to the rights above apply:

a. The military counsel appointed to assist you for administrative discharge purposes is (NAME) address is \_\_\_\_\_ and phone number is \_\_\_\_\_.

b. Being confined, you have no right to appear before the board; the board will proceed in your absence; and your counsel will present your case to the board on your behalf.

c. Action on the board will be suspended for 30 days from the date you receive this notification to give you the opportunity to exercise the rights in this notification. However, once you make an election of rights, action need not remain suspended. Failure to respond within those 30 days will be considered a waiver of rights.

SIGNATURE OF I-I/SITE CDR  
\_\_\_\_\_  
TYPED NAME AND TITLE

SIGNATURE OF CO  
\_\_\_\_\_  
TYPED NAME AND TITLE

Figure 5-2 -- Sample Notification of Discharge Proceedings for Members when an Administrative Discharge **Board IS** Required.

MARFORRES LEGAL SOP

UNIT LETTERHEAD

SSIC  
Code  
Date

From: Grade, Name, SSN/MOS, Component  
To: Commanding Officer/Inspector-Instructor, (mailing address)

Subj: ACKNOWLEDGMENT OF RIGHTS TO BE EXERCISED OR WAIVED IN  
CONNECTION WITH DISCHARGE PROCEEDINGS

Ref: (a) CO's ltr \_\_\_\_\_  
(b) MARCORSEPMAN

1. \_\_\_\_\_ I acknowledge receipt of reference (a) notifying me that I am being recommended for administrative discharge from the U.S. Marine Corps/U.S. Marine Corps Reserve in accordance with paragraph \_\_\_\_\_ of reference (b) by reason of:

a. GENERAL BASIS: **(Must match that in notification).**

b. SPECIFIC BASIS: **(Must match that in notification).**

c. FACTUAL BASIS: **(Must match that in notification).**

2. \_\_\_\_\_ I understand that I am being recommended for discharge with an \*\*\* characterization of service and that the least favorable characterization which I may receive is \*\*\*. [\*\*\* **must match that in notification**]. (Include the following language if applicable: Although I am FMCR/Retired List eligible, I have refused to request transfer to the FMCR/Retired List. I understand that, if separation is approved, I may lose all retainer/retired pay and benefits).

3. \_\_\_\_\_ I understand that if I am serving in pay grade E-4 or above and administratively separated with an other than honorable characterization of service that I will be administratively reduced to pay grade E-3 effective upon discharge in accordance with paragraph 6311.8 of reference (b).

4. In view of the above, I choose to exercise the following rights by initialing each choice.

Figure 5-3 -- Sample Acknowledgment of Rights for Members when an Administrative Discharge **Board IS Required.**

MARFORRES LEGAL SOP

a. I \_\_\_ have/\_\_\_ have NOT consulted with counsel. I understand it is in my best interests to do before exercising or waiving any of my rights. My counsel's name, grade, and Armed Force is: \_\_\_\_\_.

b. \_\_\_\_\_ I \_\_\_ do/\_\_\_ do NOT request a hearing before an administrative discharge board.

c. \_\_\_\_\_ In lieu of a hearing, I \_\_\_ have/\_\_\_ have NOT included written statements in rebuttal to this proposed separation.

d. \_\_\_\_\_ I \_\_\_ do/\_\_\_ do NOT desire to obtain copies of documents that will be forwarded to the (Separation Authority) supporting this proposed discharge.

5. If I requested a hearing before an administrative discharge board, I realize I have the following rights:

a. \_\_\_\_\_ To be present or represented by counsel if I am confined by civil authorities.

b. \_\_\_\_\_ To be represented by appointed military counsel (or military counsel of my choice, if available).

c. \_\_\_\_\_ To be represented by civilian counsel if I desire and at my own expense.

d. \_\_\_\_\_ To challenge voting members of the board or the legal advisor, if any, for cause only.

e. \_\_\_\_\_ To testify in my own behalf, subject to the provisions of Article 31, UCMJ (compulsory self-incrimination prohibited).

f. \_\_\_\_\_ At any time during the proceedings I or my counsel may submit recorded matter for consideration by the board.

g. \_\_\_\_\_ I or my counsel may call witnesses on my behalf.

h. \_\_\_\_\_ I or my counsel may question any witnesses who appear before the board.

i. \_\_\_\_\_ I or my counsel may present argument prior to the board's closing the hearing for deliberations on findings and recommendations.

Figure 5-3 -- Sample Acknowledgment of Rights for Members when an Administrative Discharge **Board IS Required.**



MARFORRES LEGAL SOP

j. \_\_\_\_\_ Upon written request to the convening authority, to be provided with a copy of the report of the board and the endorsement.

k. \_\_\_\_\_ Failure to appear without good cause at a hearing constitutes waiver of my right to be present at the hearing.

l. \_\_\_\_\_ I have the right to make a sworn or unsworn statement.

m. \_\_\_\_\_ I have the right to examine evidence presented by the board, to cross-examine witnesses appearing before the board, to submit evidence before the board, and to present final argument before the board.

n. \_\_\_\_\_ Failure to respond after being afforded a reasonable opportunity to consult with counsel constitutes waiver of the rights in paragraphs 6304.1d to 1m of the reference.

6. \_\_\_\_\_ I have read and fully understand the Purpose and Scope of the NDRB and BCNR.

7. \_\_\_\_\_ I understand that if I am separated before I complete an active duty requirement incurred because I received advanced education assistance, bonuses, or special pays, I may be required to reimburse the U.S. government on a pro rata basis for the unserved portion of the active service requirement.

8. **[USE IF RESPONDENT IS NOT IHCA]** \_\_\_\_\_ I SPECIFICALLY ACKNOWLEDGE THAT I UNDERSTAND THAT PROCESSING FOR ADMINISTRATIVE DISCHARGE DOES NOT RELIEVE ME FROM MY OBLIGATION TO SERVE ON ACTIVE AND/OR INACTIVE DUTY (INCLUDING ATTENDING RESERVE DRILLS) PENDING FINAL DECISION ON MY DISCHARGE. I MUST CONTINUE MY NORMAL ACTIVE AND/OR INACTIVE DUTY UNLESS AND UNTIL MY COMMAND INFORMS ME IN WRITING THAT (1) I AM EXCUSED FROM ACTIVE AND/OR INACTIVE DUTY OR (2) I AM DISCHARGED.

9. **[USE IF RESPONDENT IS IHCA]** Since I am confined by civilian authorities, I understand the following:

a. \_\_\_\_\_ Being confined, I have no right to appear before the board; the board will proceed in my absence; and my counsel will present my case to the board on my behalf.

Figure 5-3 -- Sample Acknowledgment of Rights for Members when an Administrative Discharge **Board IS Required.**

MARFORRES LEGAL SOP

b. \_\_\_\_\_ Action on the board will be suspended for 30 days from the date I receive this notification to give me the opportunity to exercise the rights in this notification. However, once I make an election of rights, I understand the action need not remain suspended. Failure to respond within those 30 days will be considered a waiver of rights.

\_\_\_\_\_  
Witness                                      Date                                      Respondent                                      Date

**FOR COMMAND USE ONLY (when AOR is not returned or is returned but is unsigned or improperly or incompletely executed). The Marine (INITIAL ONE):**

\_\_\_\_\_ did not return the AOR within the time limit indicated on the notification letter.

\_\_\_\_\_ refused to acknowledge receipt of the notification package

\_\_\_\_\_ returned the AOR but did not sign it

\_\_\_\_\_ returned the AOR but did not make a selection of rights

\_\_\_\_\_  
Signature of person initialing blank

\_\_\_\_\_  
Date

Figure 5-3 -- Sample Acknowledgment of Rights for Members when an Administrative Discharge **Board IS Required.**

MARFORRES LEGAL SOP

UNIT LETTERHEAD

SSIC  
Code  
Date

CERTIFIED # \_\_\_\_\_

From: Commanding Officer/Inspector-Instructor

To: Grade, Name, SSN/MOS, Component

Subj: NOTIFICATION OF DISCHARGE PROCEEDINGS

Ref: (a) MCO P1900.16F (MARCORSEPMAN)

Encl: (1) Purpose and Scope of the NDRB and BCNR

(2) Acknowledgment of Respondent's Rights

1. You are hereby notified that I intend to recommend to the (Separation Authority, e.g., Commanding General) that you be discharged from the U.S. Marine Corps/U.S. Marine Corps Reserve in accordance with paragraph \_\_\_\_\_ of the reference by reason of:

a. GENERAL BASIS: This will be the paragraph title, i.e., unsatisfactory performance. If processed for more than one basis, indicate each basis separately.

b. SPECIFIC BASIS: This is the subparagraph under the title, i.e., unsatisfactory performance of duties.

c. FACTUAL BASIS: This is the factual evidence supporting the recommendation, i.e., failing the PFT on 2 Feb 20\_\_ and 3 Mar 20\_\_.

2. The least favorable characterization of service which you may receive is \*\*\*. Although the (Separation Authority) will make the determination of characterization if you are separated, I am recommending you receive an \*\*\* discharge. [\*\*\* insert one: honorable; or general (under honorable conditions)]

3. As a result of these separation proceedings, you have the following rights:

You have the right to consult with qualified counsel prior to electing or waiving any of your rights. It is in your best interest to do so prior to waiving any of your rights.

Figure 5-4 -- Sample Notification of Discharge Proceedings for Members when an Administrative Discharge **Board IS NOT Required.**

MARFORRES LEGAL SOP

b. You have the right to present written statements to the (Separation Authority) in rebuttal to this proposed discharge.

c. You have the right to obtain copies of documents that will be forwarded to (Separation Authority) supporting the basis of this proposed separation. Classified documents shall be summarized.

d. You may waive any of these rights after being afforded an opportunity to consult with counsel and failure to respond will constitute a waiver of these rights.

e. (Use if applicable). Although you are FMCR/retired list eligible, you have refused to request transfer to the FMCR/retired list as provided in paragraph 6106.4 of the reference. If separation is approved, you may lose all retainer/retired pay and benefits.

4. If you are separated before you complete an active duty service requirement incurred because you received advanced education assistance, bonuses, or special pays, you may be required to reimburse the U.S. government on a pro rata basis for the unserved portion of the active service requirement.

5. Information on the purpose and scope of the NDRB and BCNR is at enclosure (1).

6. You will respond in writing to this notification by completing and returning enclosure (2) within the following times after receiving the notification: two working days if you received it in person; 20 days if you received it by mail.

SIGNATURE OF I-I/SITE CDR  
\_\_\_\_\_  
TYPED NAME AND TITLE

SIGNATURE OF CO  
\_\_\_\_\_  
TYPED NAME AND TITLE

Figure 5-4 -- Sample Notification of Discharge Proceedings for Members when an Administrative Discharge **Board IS NOT Required.**

MARFORRES LEGAL SOP

UNIT LETTERHEAD

SSIC  
Code  
Date

From: Grade, Name, SSN/MOS, Component  
To: Commanding Officer/Inspector-Instructor, (mailing address)  
Subj: ACKNOWLEDGMENT OF RIGHTS TO BE EXERCISED OR WAIVED IN  
CONNECTION WITH DISCHARGE PROCEEDINGS

Ref: (a) CO's ltr \_\_\_\_\_  
(b) MARCORSEPMAN

1. \_\_\_\_\_ I acknowledge receipt of reference (a) notifying me that I am being recommended for administrative discharge from the U.S. Marine Corps/U.S. Marine Corps Reserve in accordance with paragraph \_\_\_\_\_ of reference (b) by reason of:

- a. GENERAL BASIS: **(Must match that in notification).**
- b. SPECIFIC BASIS: **(Must match that in notification).**
- c. FACTUAL BASIS: **(Must match that in notification).**

2. \_\_\_\_\_ I understand that I am being recommended for discharge with an \*\*\* characterization of service and that the least favorable characterization which I may receive is \*\*\*. [\*\*\* **must match that in notification**]

3. In view of the above, I choose to exercise the following rights by initialing each choice.

a. \_\_\_\_\_ I \_\_\_have/\_\_\_have NOT consulted with counsel. I understand it is in my best interests to do so prior to exercising or waiving any of my rights. My counsel's name, grade, and Armed Force is:  
\_\_\_\_\_

b. \_\_\_\_\_ I \_\_\_have/\_\_\_have NOT included written statements in rebuttal to this proposed discharge.

c. \_\_\_\_\_ I \_\_\_do/\_\_\_do NOT desire to obtain copies of documents that will be forwarded to the (Separation Authority) supporting this proposed discharge.

Figure 5-5 -- Sample Acknowledgement of Rights for Members when an Administrative Discharge **Board IS NOT Required.**

MARFORRES LEGAL SOP

d. \_\_\_\_\_ (if applicable) Although I am FMCR/retired list eligible, I have refused to request transfer to the FMCR/retired list. I understand that, if separation is approved, I may lose all retainer/retired pay and benefits.

4. \_\_\_\_\_ I understand that if I am separated before I complete an active duty service requirement incurred because I received advanced education assistance, bonuses, or special pays, I may be required to reimburse the U.S. government on a pro rata basis for the unserved portion of the active service requirement.

5. I have read and fully understand the Purpose and Scope of the NDRB and BCNR.

6. I SPECIFICALLY ACKNOWLEDGE THAT I UNDERSTAND THAT PROCESSING FOR ADMINISTRATIVE DISCHARGE DOES NOT RELIEVE ME FROM MY OBLIGATION TO SERVE ON ACTIVE AND/OR INACTIVE DUTY (INCLUDING ATTENDING RESERVE DRILLS) PENDING FINAL DECISION ON MY DISCHARGE. I MUST CONTINUE MY NORMAL ACTIVE AND/OR INACTIVE DUTY UNLESS AND UNTIL MY COMMAND INFORMS ME IN WRITING THAT (1) I AM EXCUSED FROM ACTIVE AND/OR INACTIVE DUTY OR (2) I AM DISCHARGED.

_____ Witness	_____ Date	_____ Respondent	_____ Date
------------------	---------------	---------------------	---------------

**FOR COMMAND USE ONLY (when AOR is not returned or is returned but is unsigned or improperly or incompletely executed):**

**The Marine (INITIAL ONE):**

\_\_\_\_\_ did not return the AOR within the time limit indicated on the notification letter.

\_\_\_\_\_ refused to acknowledge receipt of the notification package

\_\_\_\_\_ returned the AOR but did not sign it

\_\_\_\_\_ returned the AOR but did not make a selection of rights

_____ Signature of person initialing blank	_____ Date
---	---------------

Figure 5-5 -- Sample Acknowledgement of Rights for Members when an Administrative Discharge **Board IS NOT Required.**

MARFORRES LEGAL SOP

AFFIDAVIT OF SERVICE

I certify that attempts to serve the Notification (dated \_\_\_\_\_), Acknowledgment of Rights, and BCNR/NDRB information on (Grade) \_\_\_\_\_ (Name) \_\_\_\_\_ USMC/USMCR were made as follows:

**SECTION I. SERVICE IN PERSONAL:**

\_\_\_\_ WAS ATTEMPTED: See the attached PERSONAL RECEIPT OF NOTIFICATION OF DISCHARGE PROCEEDINGS.

\_\_\_\_ WAS NOT ATTEMPTED: The Marine lives outside a 50-mile radius from the command. See SERVICE BY MAIL BELOW

**SECTION II. SERVICE BY CERTIFIED MAIL; RETURN RECEIPT REQUESTED:**

Date mailed: \_\_\_\_\_ Certified number: \_\_\_\_\_  
Mailed from: \_\_\_\_\_  
Mailed by: \_\_\_\_\_  
Address mailed to: \_\_\_\_\_

IF DELIVERED, ATTACH ORIGINAL PS FORM 3800 (WHITE RECEIPT) AND PS FORM 3811 (GREEN CARD) SHOWING DELIVERY; IF NOT DELIVERED, ATTACH ENVELOPE SHOWING POSTAL STAMPS AND MARKINGS INDICATING REASON FOR NO DELIVERY. IF DELIVERY NOT SUCCESSFUL, SERVE BY FIRST CLASS MAIL-SEE SECTION III.

**SECTION III. RESULT OF SERVICE (PERSONAL OR MAIL):** Marine \_\_\_\_ did/\_\_\_\_ did not return the Acknowledgment of Rights.

**SECTION IV. CERTIFICATION SIGNED/SWORN BEFORE COMMISSIONED OFFICER**

Signature of person certifying information: \_\_\_\_\_  
Grade: \_\_\_\_\_  
Command: \_\_\_\_\_ Billet: \_\_\_\_\_

**SWORN AND SUBSCRIBED** before me on \_\_\_\_\_ 20\_\_\_\_.

Signature of commissioned officer: \_\_\_\_\_  
Grade: \_\_\_\_\_  
Command: \_\_\_\_\_ Billet: \_\_\_\_\_

MARFORRES LEGAL SOP

UNIT LETTERHEAD

SSIC  
Code  
Date

From: Grade, Name, SSN/MOS, Component  
To: Commanding Officer/Inspector-Instructor

Subj: PERSONAL RECEIPT OF NOTIFICATION OF SEPARATION PROCEEDINGS

1. On the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, I personally received the original Notification of Separation Proceedings dated \_\_\_\_\_, the Acknowledgment of Rights form, and the Purpose and Scope of the Navy Discharge Review Board and Board for Correction of Naval Records form.

\_\_\_\_\_  
Signature of Marine

\_\_\_\_\_  
Witness

Figure 5-7 -- Personal Receipt of Notification of Discharge Proceedings



MARFORRES LEGAL SOP

UNIT LETTERHEAD

SSIC  
Code  
Date

From: Commanding Officer/Site Commander  
To: Commander, Marine Forces, Reserve (Attention: SJA), 4400  
Dauphine Street, New Orleans, LA 70146  
[Via: Chain of Command, if required]

Subj: RECOMMENDATION FOR ADMINISTRATIVE DISCHARGE OF (GRADE,  
FULL NAME, SSN/MOS, COMPONENT)

Ref: (a) MCO P1900.16F (MARCORSEPMAN)  
(b) ForO P5800.6

Encl: (1) Letter of Notification  
(2) Acknowledgment of Rights  
(3) BCNR/NDRB information sheet  
(4) Affidavit of Service **[include in all cases]**  
**\*\*\*ENCLOSURE 5 WILL BE EITHER 5A, 5B, OR 5C BELOW\*\*\***  
(5A) Personal receipt of notification OR  
(5B) Postal Forms 3800 and 3811 **[SUCCESSFUL MAIL DELIVERY]** OR  
(5C) Postal Forms 3800 and 3811 with undeliverable envelope **[UNSUCCESSFUL MAIL DELIVERY]**  
(6) Standard Page Side of SRB  
(7) DD Form 1966  
(8) VIS Screens S984 and D986  
(9) Statement from respondent **[if any]**

[ENCLOSURES FOR SPECIFIC CASES]

- ( ) Unsatisfactory Participation Worksheet
- ( ) Statement from supervisors **[unsat partic]**
- ( ) Reduction/unsat participation letters **[unsat partic]**
- ( ) Page(s) from command ledger **[urinalysis case]**
- ( ) Chain of custody (DD Form 2624) **[urinalysis case]**
- ( ) Message from drug lab **[urinalysis case]**
- ( ) PFT score sheets **[PFT]**
- ( ) Weigh-in sheets **[weight case]**
- ( ) CO letter requesting weight evaluation **[weight case]**
- ( ) First through fifth endorsements **[weight case]**

Figure 5-8 -- Command Letter of Recommendation for Administrative Discharge (WITHOUT BOARD). **Note: This format can be used or it will be automatically generated in MCEAS.**

## MARFORRES LEGAL SOP

Subj: RECOMMENDATION FOR ADMINISTRATIVE DISCHARGE OF (GRADE, FULL NAME, SSN/MOS, COMPONENT)

1. I/We recommend that \_\_\_\_\_ be discharged from the U.S. Marine Corps (Reserve) with a [(honorable) (general (under honorable conditions) (other than honorable)] discharge under paragraph \_\_\_\_\_ of reference (a).
2. [Summarize facts and circumstances supporting the basis for discharge and the recommended character.]
3. **[Unsatisfactory participation cases:** at a minimum, include the Unsatisfactory Participation Worksheet (figure 5-17) as an enclosure. Also, summarize efforts the command made to contact the Marine, determine why he was missing drills, and to assist him in attending drills. Also, include as enclosures any (1) statements by supervisors concerning efforts to contact the Marine, determine why he was missing drills, and to assist him in attending drills and (2) letters concerning administrative reduction and unsatisfactory participation.]
4. [Rebut any false or inaccurate assertions the Marine makes in his rebuttal if he chooses to make one. Comment if the Marine said he wanted to submit a rebuttal or statement but never did so. Clarify any issues concerning TNPQ status.]
5. **[SERVICE: USE WHEN PERSONAL SERVICE WAS SUCCESSFUL]** The notification package (enclosures (1), (2), and (3)) was delivered in person to the Marine. The Marine (did) (did not) return the acknowledgment of rights. See enclosures (4) and (5A).
5. **[SERVICE: USE WHEN SERVICE BY MAIL WAS SUCCESSFUL--MARINE NOT PERSONALLY CONTACTED]** The notification package (enclosures (1), (2), and (3)) was sent certified mail, restricted delivery, return receipt requested, because the Marine was not served by personal contact. The Marine signed for the package and (did) (did not) return the acknowledgment of rights. See enclosures (4) and (5B).
5. **[SERVICE: USE WHEN SERVICE BY MAIL WAS NOT SUCCESSFUL--MARINE NOT PERSONALLY CONTACTED]** The notification package (enclosures (1), (2), and (3)) was sent certified mail, restricted delivery, return receipt requested because the Marine was not served by personal contact. The package was returned a (unclaimed) (undeliverable). See enclosures (4) and (5C).

Figure 5-8 -- Command Letter of Recommendation for Administrative Discharge (WITHOUT BOARD). **Note: This format can be used or it will be automatically generated in MCEAS.**

MARFORRES LEGAL SOP

Subj: RECOMMENDATION FOR ADMINISTRATIVE DISCHARGE OF (GRADE,  
FULL NAME, SSN/MOS, COMPONENT)

6. **[RESERVISTS ONLY: NON-URINALYSIS CASES AND COMMAND RECOMMENDS GENERAL OR OTH CHARACTERIZATION]** If the basis for discharge is conduct in the civilian community by a Reservist while not on active duty or active duty for training, provide evidence supporting general or OTH. See MARCORSEPMAN, paragraph 1004.4d.]

7. **[RESERVISTS ONLY: URINALYSIS CASES AND COMMAND RECOMMENDS GENERAL OR OTH CHARACTERIZATION]** [For THC, BZE and (meth)amphetamine: Since the respondent possessed a controlled substance [THC, BZE or (meth)amphetamine] as shown by urinalysis of a sample provided when the Marine was in a duty status, (general)(OTH) characterization is warranted without regard to the limitation of paragraph 1004.4d of reference (a).]

8. If you have any questions, please call my administrative (officer)(chief), \_\_\_\_\_, at (commercial)(DSN) \_\_\_\_\_.

SIGNATURE OF I-I/SITE CDR  
\_\_\_\_\_  
TYPED NAME AND TITLE

SIGNATURE OF CO  
\_\_\_\_\_  
TYPED NAME AND TITLE

Figure 5-8 -- Command Letter of Recommendation for Administrative Discharge (WITHOUT BOARD). **Note: This format can be used or it will be automatically generated in MCEAS.**

MARFORRES LEGAL SOP

UNIT LETTERHEAD

SSIC  
Code  
Date

FIRST ENDORSEMENT on CO/I-I, \_\_\_\_\_ ltr \_\_\_\_\_

From: Commanding Officer/Site Commander  
To: Separation Authority (Attention: SJA), 4400 Dauphine  
Street, New Orleans, LA 70146  
[Via: Chain of Command]

Subj: RECOMMENDATION FOR ADMINISTRATIVE DISCHARGE OF (GRADE,  
FULL NAME, SSN/MOS, COMPONENT)

Encl: (1) Report of board  
(2) Defense counsel comment on board (if any)  
(3) Recorder's response to defense counsel's comment  
(4) [Other enclosures included by convening authority]

1. As evidenced by enclosure (1), an administrative discharge board convened to hear this case. The board found that the preponderance of the evidence (proved) (did not prove) the allegations and recommended (retention) [(honorable) (general (under honorable conditions)) (other than honorable)] discharge.

2. I (agree) (disagree) with the board's findings and recommendations. [Comments if any. Before disagreeing with a board's findings and recommendations, see MARCORSEPMAN, paragraph 6309.2, concerning the separation authority's actions in board cases].

3. Counsel for the respondent submitted comment on the board; see enclosure (2). Enclosure (3) is the recorder's response to enclosure (2).

4. [Explain other enclosures included by the convening authority.]

\_\_\_\_\_  
Signature of CA

FIGURE 5-9 -- COMMAND LETTER OF RECOMMENDATION/ENDORSEMENT FOR  
Administrative Discharge (**WITH BOARD**)

MARFORRES LEGAL SOP

UNIT LETTERHEAD

SSIC  
Code  
Date

From: Commanding Officer/Inspector-Instructor  
To: (Grade, Name, SSN/MOS, Component, President

Subj: APPOINTMENT OF ADMINISTRATIVE DISCHARGE BOARD IN THE CASE  
OF (Grade, Name, SSN/MOS, Component)

Ref: (a) MARCORSEPMAN  
(b) ForO P5800.6

1. Under the references, you are appointed as president of an administrative discharge board to consider the case of the Respondent.

2. The following are detailed as members of the Board:

3. (Grade, name, component) is detailed as the non-voting recorder for the Board and is so notified by separate copy hereof.

4. (Grade, name, component), a lawyer certified under Article 27(b), UCMJ, is detailed as counsel for respondent and is so notified by separate copy hereof.

5. You will be guided in the performance of your duties by the references. The attendance of all appointed personnel at the Board's proceedings is mandatory. You will determine the date and location of the hearing after consulting the recorder and the defense counsel.

6. The board's report and record will be prepared according to the references and forwarded to me within 30 days after the Board has adjourned. Extensions of this due date must be requested in writing.

SIGNATURE OF I-I/CO/SITE CDR  
TYPED NAME AND TITLE

Copy to:  
Recorder/Counsel for Respondent/Each Board Member  
SJA, MARFORRES

MARFORRES LEGAL SOP

UNIT LETTERHEAD

SSIC  
Code  
Date

CERTIFIED MAIL NUMBER \_\_\_\_\_

From: Commanding Officer/Inspector-Instructor  
To: (Grade, Name, SSN/MOS, Component)

Subj: NOTIFICATION OF DATE, TIME, AND PLACE OF ADMINISTRATIVE  
DISCHARGE BOARD HEARING

Encl: (1) Appointing order

1. Per your request for a hearing before an administrative discharge board, the board will convene as follows:

- a. Date:
- b. Time:
- c. Place:

2. If the board is held during a drill weekend, you will be excused from the drill to the extent needed to attend the board.

3. You will report to the board in the \_\_\_\_\_ uniform with a proper Marine Corps regulation haircut.

4. If you have questions about the board, contact this command or your defense counsel, Name/Grade, at (phone number).

5. Inform this command if you decide not to attend the board hearing. If you do not attend the board hearing, it will proceed in your absence and your counsel will represent you.

6. THE BOARD PROCEEDINGS DO NOT RELIEVE YOU FROM YOUR OBLIGATION TO SERVE ON ACTIVE AND/OR INACTIVE DUTY (INCLUDING ATTENDING RESERVE DRILLS) PENDING FINAL DECISION ON YOUR DISCHARGE. YOU MUST CONTINUE YOUR NORMAL ACTIVE AND/OR INACTIVE DUTY UNLESS AND UNTIL YOUR COMMAND INFORMS YOU IN WRITING THAT (1) YOU ARE EXCUSED FROM ACTIVE AND/OR INACTIVE DUTY OR (2) YOU ARE DISCHARGED.

\_\_\_\_\_  
SIGNATURE OF I-I/CO

\_\_\_\_\_  
TYPED NAME AND TITLE

Copy to:  
Defense counsel

Figure 5-11 -- Notice to Respondent of Date, Time, and Place of  
Board Hearing

## MARFORRES LEGAL SOP

### ADMINISTRATIVE DISCHARGE BOARD HEARING GUIDE IN THE CASE OF PRELIMINARY NOTES

1. Attendance at the board hearing is the primary duty for members, the recorder, and counsel for the respondent. All must attend board sessions unless ill, ordered away, or excused IN WRITING by a written modification to the convening order signed by the convening authority. All participants should read the provisions of the MARCORSEPMAN concerning administrative discharge boards and the basis or bases for discharge.
2. If the respondent will testify, the recorder must provide him a written Privacy Act (figure 5-13) statement before he testifies. Other witnesses need not be given Privacy Act statements.
3. **If a "legal advisor" is appointed to the board (most boards should NOT have a legal advisor), see MARCORSEPMAN, paragraph 6315.4, and call the MARFORRES SJA's office.**
4. WARNING: Modify the guide if the basis for the board is homosexual conduct. See 6207.6 of the MARCORSEPMAN and call MARFORRES OSJA.
5. The following abbreviations are used throughout this Guide:  
  
SRMBR:           Senior Member  
COUNSEL:        Counsel for the respondent  
REC:             Recorder for the board  
RESP:            Respondent  
BOARD:           Administrative Discharge Board  
UCMJ:            Uniform Code of Military Justice

### SECTION I. PRELIMINARIES

SRMBR: This administrative discharge board will come to order.  
The recorder will note the time and date for the record.

REC: The (Commanding Officer) (Inspector-Instructor),  
(Organization) has convened this board by his appointing order,  
dated \_\_\_\_\_, (with no modifications) (as modified by  
the modification dated \_\_\_\_\_). The following  
members named in the appointing order(s) are present:  
\_\_\_\_\_, SENIOR MEMBER  
  
\_\_\_\_\_ and \_\_\_\_\_, MEMBERS

## MARFORRES LEGAL SOP

REC: The respondent (is a member of the Regular component)(is a member of the Reserve component and the following members are members of the Reserve component: \_\_\_\_\_).

REC: (The following member(s) listed in the appointing order(s) (is) (are) absent (with the express consent of the convening authority): \_\_\_\_\_).

REC: \_\_\_\_\_, is appointed recorder for the board and is present. He is (not) a lawyer certified under Article 27(b)(1), UCMJ.

REC: \_\_\_\_\_, a lawyer certified under Article 27(b)(1), UCMJ, is appointed counsel for the respondent and is present.

REC: (The respondent has no individual military counsel) (\_\_\_\_\_, a lawyer certified under Article 27(b)(1), UCMJ, is appointed as individual military counsel for the respondent and is present.)

REC: (The respondent has no civilian counsel) (\_\_\_\_\_, a member of the \_\_\_\_\_ state bar, is the civilian counsel for the respondent and is present).

SRMBR: The record will reflect that this board is properly convened and constituted. The purpose of this board is to consider relevant facts in the case of \_\_\_\_\_, who has been recommended for administrative discharge from the naval service for (unsatisfactory participation) (misconduct) (unsatisfactory performance) (\_\_\_\_\_).

SRMBR: The respondent is present. [The respondent is absent because (he is confined by civil authorities)(he waived personal appearance by stating that he does not want to appear)(he received notification of the date, time, and place of this hearing but did not appear)].

### **SECTION II. RIGHT TO COUNSEL**

SRMBR: I will now advise the respondent of his right to counsel before the board. These rights were listed in the notification and the acknowledgment of rights. Does counsel desire that I explain these rights to the respondent?



## MARFORRES LEGAL SOP

COUNSEL: The respondent (desires explanation) (fully understands his rights and does not desire further explanation).

NOTE: RESPONDENT DESIRES TO REPRESENT HIMSELF. If respondent desires to represent himself, the senior member should still review the rights in Section III below.

### **SECTION III. EXPLANATION OF RIGHT TO COUNSEL (OMIT & GO TO SECTION IV IF RESPONDENT WAIVES EXPLANATION)**

SRMBR: I will now advise the respondent of his rights before this board. If you have any questions about these rights, you should direct them to me, or, in private, to your counsel. You have the following rights:

a. To have military counsel, that is, a lawyer within the meaning of Article 27(b)(1), UCMJ, appointed by the Convening Authority to represent your interests before this board.

b. To request individual military counsel of your own choice, if reasonably available; however, you do not have the right to be represented by both detailed counsel and the requested individual military counsel.

c. To retain civilian counsel at no expense to the Government.

SRMBR: Do you understand your right to counsel before this administrative discharge board?

RESP: (Yes)(No) sir/ma'am.

SRMBR: By whom do you wish to be represented?

RESP: \_\_\_\_\_.

NOTE: The respondent may elect to represent himself at the board, but his detailed defense counsel should still be present. If he desires to represent himself, he must so state on the record and sign a written waiver of counsel that will be included as a government exhibit. The senior member, after inquiring to ensure that the respondent is knowingly and voluntarily waiving his right to counsel, should state, "I find your waiver of counsel to be knowing and voluntary."

**SECTION IV. ADDITIONAL RIGHTS**

SRMBR: In addition to your right to counsel, you have many other rights at this board. These were listed in the notification and the acknowledgment of rights. Does counsel desire that I explain these additional rights to the respondent?

COUNSEL: The respondent (desires explanation) (fully understands his rights and does not desire further explanation).

**SECTION V. EXPLANATION OF ADDITIONAL RIGHTS (OMIT AND GO TO SECTION VI IF RESPONDENT WAIVES EXPLANATION)**

SRMBR: I will now advise the respondent of his rights before this board. If you have any questions about these rights, you should direct them to me, or, in private to your counsel. You have the following rights:

1. To present matters on your own behalf.
2. To have full access to, and be provided with, copies of all records relevant to your case.
3. To be provided with the names of all witnesses expected to be called by the government.
4. To challenge any member of the board for cause.
5. To request from the convening authority, or this board, the appearance before the board of any witness whose testimony you consider to be pertinent to your case.
6. To submit for the board's consideration any matters from your service record; letters, answers, sworn or unsworn statements; and/or affidavits, certificates, stipulations, or depositions. You also have the right to submit real and/or documentary evidence.
7. You may also testify under oath. If you testify under oath, the board and the recorder may cross-examine you about your testimony. In the alternative, you may make an unsworn statement, either personally or through counsel. You may not be cross-examined if you make an unsworn statement; however, the recorder may introduce evidence to rebut anything contained in your statement. Also, you may, if you wish, remain silent and such silence cannot be considered against you.

## MARFORRES LEGAL SOP

8. To appear in person, with or without counsel, at all open sessions of the board.
9. To question all witnesses appearing before the board.
10. To examine all documents, reports, statements and evidence presented for the board's consideration.
11. To present argument on any matter offered for the board's consideration.

SRMBR: Do you have any questions concerning your rights at this administrative discharge board?

RESP: (Yes) (No), sir/ma'am.

### **SECTION VI. GENERAL INSTRUCTIONS**

SRMBR: The purpose of this administrative discharge board is to give the respondent a full and impartial hearing and an opportunity to respond to and rebut the allegations which form the basis for recommending the respondent's discharge from the Naval service.

SRMBR: After hearing evidence from both sides, the board will determine whether the preponderance of the evidence proves the allegations that form the basis for the recommendation for discharge. If a preponderance of the evidence does not support the allegations, the board will so find. If a preponderance of the evidence supports the allegations, the board will so find and then recommend whether the respondent should be discharged. If the board recommends discharge, it will also recommend the characterization of the discharge. Depending on the board's findings and recommendations, final action on the case may be taken by the separation authority who is \_\_\_\_\_; the Commandant of the Marine Corps; or the Secretary of the Navy.

SRMBR: This board functions as an administrative rather than a judicial body. The strict rules of evidence applicable in judicial hearings are, therefore, not applicable here. However, Article 31(b), UCMJ, does apply.

SRMBR: The following will occur during the hearing: presentation of the government's case; presentation of the respondent's case; rebuttal; closing arguments from counsel; instructions for the members; and deliberation by the members.

## MARFORRES LEGAL SOP

The members are cautioned not to make any decisions until after hearing all the evidence; final argument of counsel; and instructions on deliberation. All board proceedings will be conducted in this room while the board is in session.

SRMBR: This board will consider any matter presented which is relevant to the issues before the board, whether written or oral, sworn or unsworn. Real evidence--as distinguished from testimonial or documentary evidence--may be shown and admitted to the board and should be accurately described or reproduced for the record. The board may refuse to consider any oral or written matter presented if it is irrelevant or unnecessarily repetitive or cumulative. However, evidence will not be excluded merely because it would be inadmissible in a court. If evidence is classified, the provisions of the Department of the Navy information security regulations will be observed.

SRMBR: The burden of proof is on the Government, and it never shifts unless I instruct the board otherwise. **[Warning: In homosexual conduct cases, see paragraph 6207 of the MARCORSEPMAN.]** Board decisions are made by majority vote based on the preponderance of the evidence, which is the standard of proof. A preponderance, which is the same standard for nonjudicial punishment hearings, is less than beyond a reasonable doubt, which is the standard at a court-martial. A preponderance of the evidence proves a fact if the greater weight of evidence, i.e., 51% or more of the evidence, supports the fact. The weight of the evidence is not determined by the sheer number of witnesses or volume of evidentiary matter; it is determined by the evidence that best accords with reason and probability. The board members will rely on their individual judgment and experience in determining the weight and credibility to be given matters received in evidence.

SRMBR: The senior member need not rule on objections: he may merely note them for the record. If the senior member does rule on objections, a majority of the board may overrule the senior member's ruling.

SRMBR: Since the procedures used at this hearing may be unfamiliar to the board members, the members are encouraged to ask questions during the hearing about those procedures.

SRMBR: The board's business will be conducted in an atmosphere of decorum and dignity. Board members and witnesses will be treated with respect and protected from questions that go beyond the bounds of proper examination and propriety.

**SECTION VII. SPECIAL INSTRUCTIONS: HOMOSEXUAL CASES**  
**(OMIT AND GO TO SECTION VIII IF THE CASE DOES NOT INVOLVE**  
**HOMOSEXUAL CONDUCT**

SRMBR: Because the recommended basis for discharge is homosexual conduct, additional procedures apply to this board.

1. A statement by a Marine that he is a homosexual, or words to that effect, creates a rebuttable presumption that he engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

2. I must advise you of this presumption and give you the opportunity to rebut it. While in most cases, as indicated above, the burden of proof never shifts from the Government, in cases of homosexual conduct the Marine has the burden of rebutting this presumption. This means he must prove by a preponderance of the evidence that he does not engage in, attempt to engage in, have a propensity to engage in, or intend to engage in homosexual acts. If the Government proves that the statements were made and the Respondent does not rebut the presumption, then the board must recommend discharge.

3. Does the respondent have a question about this?

RESP: \_\_\_\_\_

REC: I will note for the record that the MARCORSEPMAN requires the board to be informed of the Congressional findings found in paragraph 6207 of the MARCORSEPMAN. The recorder is directed to ensure that a copy of these findings are made available for the board to review during deliberations, and the copy will be made a government exhibit.

**VIII. CHALLENGES TO BOARD MEMBERS**

SRMBR: Does the recorder or counsel for respondent wish to question any member of the board concerning a possible grounds for challenge for cause? (See MARCORSEPMAN, paragraph 6316.7, for procedures for challenges.)

REC: The recorder has (no) questions.

COUNSEL: The respondent has (no) questions.

SRMBR: Does either side wish to challenge a member for cause?

## MARFORRES LEGAL SOP

REC: The recorder (does not)(has the following challenges:  
\_\_\_\_\_).

COUNSEL: The respondent (does not)(has the following challenges:  
\_\_\_\_\_).

SRMBR: [Recess if necessary to decide challenges. Announce decisions on challenges.]

SRMBR: Are both sides ready to proceed?

REC: The recorder is.

COUNSEL: Counsel for the respondent is.

### **SECTION IX. MOTIONS AND OPENING STATEMENTS**

SRMBR: Does either side have any motions?

REC: The recorder (has no motions) (has the following motions:\_\_\_).

COUNSEL: Counsel for the respondent (has no motions) (has the following motions: \_\_\_\_\_).

SRMBR: The recorder may make an opening statement.

REC: The recorder (waives opening statement) (\_\_\_\_\_).

SRMBR: Counsel for the respondent may present an opening statement.

COUNSEL: (Counsel waives opening statement) (\_\_\_\_\_).

### **SECTION X. PRESENTATION OF EXHIBITS**

SRMBR: Paragraph 6316.8 of the MARCORSEPMAN has guidelines for presenting evidence. We will follow those guidelines, with one exception. Unless counsel object, I will ask that each side submit its exhibits now before the board hears testimony from any of the witnesses. This will facilitate the board's questioning of all witnesses. Does either counsel object to the board receiving all exhibits now?

REC: The recorder (objects) (does not object).

COUNSEL: Counsel for the respondent (objects) (does not object).

SRMBR: Is the recorder ready to proceed?

MARFORRES LEGAL SOP

REC: Yes, sir/ma'am.

SRMBR: You may proceed.

REC: I will hand to the senior member the original government exhibits offered to the board. They are marked as "GE" and numbered as follows:

GE-\_\_: Appointing order [original or authenticated copy]  
GE-\_\_: Modification to appointing order (if any).  
GE-\_\_: Notification package: notice, AOR, BCNR/NDRB.  
GE-\_\_: [If respondent is absent: notice of hearing (see Figure 5-11 of this Manual); include receipt for notice if delivered in person; include PS Form 3811 (green card) if notice was mailed]  
GE-\_\_: Standard pages from SRB (including DD Form 4)  
GE-\_\_: DD Form 1966.  
GE-\_\_: S984/986  
GE-\_\_: Paragraph 62\_\_\_\_, MARCORSEPMAN (basis for discharge)  
GE-\_\_: Paragraph 1004, MARCORSEPMAN (characterization)  
GE-\_\_: Paragraph \_\_\_\_\_, Manual for Courts-Martial (use for 6210.6 to show punitive discharge is authorized)  
GE-\_\_: \_\_\_\_\_  
GE-\_\_: \_\_\_\_\_  
GE-\_\_: Privacy Act statement (if respondent testifies)

REC: I also have copies of the exhibits for each member; please write on them but not on the originals. Included in a separate folder with the original exhibits is the original findings and recommendations worksheet the members will use to record findings and recommendations. It will also be used as the board report.

SRMBR: Does counsel for the respondent object to any of these exhibits or to the findings and recommendation worksheet?

COUNSEL: Counsel for the respondent (does not object) (objects for the following reasons: \_\_\_\_\_).

SRMBR: All government exhibits (are admitted) (are admitted except for numbers \_\_\_\_\_). (The following objections are (noted) (decided as follows:)). The recorder may substitute in the record certified true copies of the documents that are admitted. Does the respondent have any exhibits?

COUNSEL: The respondent offers the following exhibits. They are marked as "RE" and lettered:

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RE A: \_\_\_\_\_  
RE B: \_\_\_\_\_  
RE C: \_\_\_\_\_

SRMBR: Does the recorder object to any of these exhibits?

REC: The recorder (does not object) (objects for the following reasons: \_\_\_\_\_).

SRMBR: All respondent exhibits (are admitted) (are admitted except for numbers \_\_\_\_\_.) (The following objections are (noted) (decided as follows:)). The recorder may substitute in the record certified true copies of the documents that are admitted.

SRMBR: The board will be in recess to review these documents. The recorder will note the time and date in the record of proceedings.

**SECTION XI. WITNESSES**

SRMBR: The board will come to order. All persons who were present when the board recessed are again present. The recorder will note the time and date in the record of proceedings. Does the recorder have any witnesses?

REC: The recorder (calls \_\_\_\_\_ as a witness) (has nothing further).

NOTE: The recorder may call witnesses. All witnesses will be sworn. **OATH: Do you swear or affirm that the evidence you shall provide at this hearing shall be the truth, the whole truth and nothing but the truth?** The order of questioning (see paragraph 6316.8b, MARCORSEPMAN): direct examination by recorder; cross-examination by respondent's counsel; redirect; re-cross; examination by the board. **After witnesses testify, the president may direct them not to discuss their testimony with anyone other than the recorder or the counsel for the respondent until after the hearing has ended.**

SRMBR: Does the recorder have any further evidence or witnesses?

REC: (Yes) (No), sir/ma'am.

SRMBR: Does the respondent have any witnesses?



MARFORRES LEGAL SOP

COUNSEL: The respondent (calls \_\_\_\_\_ as a witness) (has nothing further).

NOTE: The respondent may call witnesses. All witnesses will be sworn (only the respondent may give unsworn testimony). **OATH: Do you swear or affirm that the evidence you shall provide at this hearing shall be the truth, the whole truth and nothing but the truth?** The order of questioning: direct examination by respondent's counsel; cross-examination by recorder; redirect; re-cross; examination by the board. If the respondent testifies, he will sign and date a Privacy Act statement to be attached to the record as a government exhibit. **After witnesses testify, the president may direct them not to discuss their testimony with anyone other than the recorder or the counsel for the respondent until after the hearing has ended.**

SRMBR: Does the respondent have any other evidence?

COUNSEL: (Yes) (No), sir/ma'am.

**XII. REBUTTAL**

SRMBR: Does the recorder have any matters in rebuttal?

REC: The recorder has (nothing further) (calls the following witnesses: \_\_\_\_\_) (submits the following exhibits: GE- \_\_\_\_\_).

SRMBR: (The following government exhibits are admitted: GE- \_\_\_\_\_).

SRMBR: Does counsel for the respondent have any more evidence?

COUNSEL: Counsel for the respondent has (nothing further) (calls the following witnesses: \_\_\_\_\_) (submits the following exhibits: RE- \_\_\_\_\_).

SRMBR: (The following respondent exhibits are admitted: RE- \_\_\_\_\_).

SRMBR: Does any member of the board want to recall a witness, call an additional witness, or obtain any further evidence?

SRMBR: The members have indicated they (do) (do not) want to recall a witness, call an additional witness, or obtain any further evidence.

**XIII. CLOSING ARGUMENTS**

SRMBR: Are both sides prepared for argument?

REC: The recorder is.

COUNSEL: Counsel for the respondent is.

SRMBR: The recorder may proceed with closing argument.

REC: \_\_\_\_\_.

SRMBR: Counsel for the respondent may proceed with closing argument.

COUNSEL: \_\_\_\_\_.

SRMBR: Does the recorder have any final argument?

REC: (Yes) (no), sir/ma'am.

SRMBR: Does either side have anything further to present?

REC: The government has \_\_\_\_\_ (nothing further).

COUNSEL: The respondent has \_\_\_\_\_ (nothing further).

**XIV. INSTRUCTIONS ON DELIBERATION**

SRMBR: The board deliberation includes a full and free discussion of all matters presented to the board. In determining retention or separation, the board will consider the guidelines at paragraph 6309 of the MARCORSEPMAN. In determining characterization, the board will consider the guidelines in paragraph 1004 of the MARCORSEPMAN.

In determining retention in the IRR, the board will consider the guidelines in paragraph 6311.3 of the MARCORSEPMAN.

SRMBR: The board will decide its findings and recommendations by majority vote, and the senior member will record them by placing his or her initials in the blank beside any finding or recommendation decided by majority vote. Does either side object to the worksheet?

REC: The recorder does not.

COUNSEL: Counsel for the respondent does not.

## **XV. SPECIAL INSTRUCTIONS**

SRMBR: **[Read if the respondent is an inactive Reservist being processed for discharge based on conduct in the civilian community committed while the respondent was not on active duty or active duty for training:** The board is advised that it cannot recommend a general or other than honorable characterization for a discharge in this case unless the evidence meets the criteria in paragraph 1004.4d of the MARCORSEPMAN, which the board will review during deliberation.]

SRMBR: **[Read if evidence of prior or preservice activities has been introduced:** The board is advised that paragraphs 1004.4 of the MARCORSEPMAN impose limitations on considering evidence of prior service or preservice activities. The board will review those paragraphs during deliberation.]

SRMBR: **[Read if the basis for processing includes homosexual conduct:** Since the basis for discharge is homosexual conduct, the following instructions apply:

1. If the board finds that the evidence proves one or more of the circumstances authorizing separation as described in paragraph 6207 of the MARCORSEPMAN, the board shall recommend separation unless it finds that retention is warranted under the limited circumstances described in paragraph 6207. "Limited circumstances" requiring retention means that the Marine rebutted the presumption that he engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. The member has the burden of proving those limited circumstances; in other words, the member has the burden of rebutting the presumption.

2. If the board finds the evidence does not prove that one or more of the circumstances authorizing separation has occurred, the board shall recommend retention unless the case involves another basis for separation of which the member has been duly notified.

3. In cases of homosexual conduct the MARCORSEPMAN does not authorize the board to recommend transfer to the IRR or to recommend suspension of a discharge.]

## **PART XVI. CLOSING FOR DELIBERATION**

SRMBR: Does either side have any questions or anything further?

REC: The government has (none).

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COUNSEL: The respondent has (none).

SRMBR: The board closed for deliberation at \_\_\_\_\_ hours, \_\_\_\_\_ on 20\_\_ . All parties, except board members, will leave the hearing room.

### **XVII. ANNOUNCEMENT OF FINDINGS AND RECOMMENDATIONS**

SRMBR: The board opened at \_\_\_\_\_ hours \_\_\_\_\_ 20\_\_ . I will announce the findings and recommendations of the board by reading from the worksheet (read findings and recommendations). This worksheet will also be the board's report; enclosure (1) to the report will be the record of the hearing.

SRMBR: (We have no minority report) (One of the board members, \_\_\_\_\_, will be submitting a minority report which will be included as an enclosure to the board's report).

SRMBR: Does anyone have any other business to bring before the board? If not, the board is adjourned.

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PRIVACY ACT STATEMENT FOR THE RESPONDENT

Under the authority of Section 301 of Title 5, U.S. Code, information on your personal background may be requested to provide the administrative discharge board with additional information to assist the board in determining whether to recommend your retention, discharge, or transfer to the Individual Ready Reserve; if discharge is recommended, the information may assist the board in determining the characterization of the discharge. The information may also be requested to evaluate your testimony or your credibility as a witness.

The information you provide will become a part of the record of proceedings of the administrative discharge board. Officials in the Department of the Navy may use it in making recommendations or decisions in your case; employees and officials of the Department of Defense, Veterans Administration, and other federal or state agencies may also use the information in performing their duties.

You are not required to provide this information, but failure to do so may deprive the board of valuable information which it might otherwise consider in making findings and recommendations in your case.

\_\_\_\_\_  
Signature of respondent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name, grade, and service

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name, grade, and service

FIGURE 5-13 -- PRIVACY ACT STATEMENT

MARFORRES LEGAL SOP

UNIT LETTERHEAD

SSIC  
Code  
Date

From: Senior Member  
To: Convening Authority

Subj: ADMINISTRATIVE DISCHARGE BOARD REPORT: FINDINGS AND  
RECOMMENDATIONS IN THE CASE OF (Respondent's Grade, Name,  
SSN/MOS, Component)

Ref: (a) MCO P1900.16F (MARCORSEPMAN)

Encl: (1) Record of board hearing  
(2) Minority report **[if any]**

1. As directed, an administrative discharge board convened in this case to hear allegations against the respondent and to make findings and recommendations.

2. The facts and circumstances and supporting documents which are the basis for the board's findings and recommendations are in the record (enclosure (1)).

3. The senior member initialed the following findings and recommendations, all reached in closed sessions of the board, and announced the findings and recommendations at the hearing as follows:

a. FINDING: EVIDENCE CONSIDERED. The specific evidence considered for each act or omission alleged in the notification was all government and respondent exhibits and testimony of all witnesses.

b. FINDING: PREPONDERANCE OF THE EVIDENCE.

(1) \_\_\_\_\_ The board determined by a majority that the preponderance of the evidence--

(a) \_\_\_\_\_ **DOES NOT** prove any of the acts or omissions alleged in the notification. (Senior member must check C1 below).

(b) \_\_\_\_\_ **PROVES ALL** acts or omissions alleged in the notification.

Figure 5-14 -- Administrative Discharge Board Report and Findings  
and Recommendations Worksheet

MARFORRES LEGAL SOP

Subj: ADMINISTRATIVE DISCHARGE BOARD REPORT: FINDINGS AND  
RECOMMENDATIONS IN THE CASE OF (Respondent's Grade, Name,  
SSN/MOS, Component)

(c) \_\_\_\_\_ PROVES ONLY the following act(s) or  
omission(s) alleged in the notification: \_\_\_\_\_.

(2) \_\_\_\_\_ For those acts or omissions which the board  
**DOES** find supported by the preponderance of the evidence, the  
board further finds that those acts or omissions apply to the  
following reason(s) for separation listed in the notification  
letter:

\_\_\_\_\_ Misconduct  
\_\_\_\_\_ Minor disciplinary infractions  
\_\_\_\_\_ Pattern of misconduct  
\_\_\_\_\_ Commission of a serious offense  
\_\_\_\_\_ Drug abuse  
\_\_\_\_\_ Unsatisfactory participation  
\_\_\_\_\_ Unsatisfactory performance  
\_\_\_\_\_ Other: \_\_\_\_\_.

c. RECOMMENDATIONS. By majority vote, the board  
recommends:

- (1) \_\_\_\_\_ RETENTION in the Marine Corps (Reserve).  
(2) \_\_\_\_\_ SEPARATION from the Marine Corps (Reserve).

(3) \_\_\_\_\_ If the board recommends SEPARATION, it  
recommends the following CHARACTERIZATION:

- (a) \_\_\_\_\_ honorable.  
(b) \_\_\_\_\_ general (under honorable conditions).  
(c) \_\_\_\_\_ other than honorable.

d. \_\_\_\_\_ If the board recommends SEPARATION, it recommends  
the separation:

- (1) \_\_\_\_\_ **SHOULD BE** suspended.  
(2) \_\_\_\_\_ **SHOULD NOT BE** suspended.  
(3) \_\_\_\_\_ suspension not authorized.

MARFORRES LEGAL SOP

Subj: ADMINISTRATIVE DISCHARGE BOARD REPORT: FINDINGS AND  
RECOMMENDATIONS IN THE CASE OF (Respondent's Grade, Name,  
SSN/MOS, Component)

See MARCORSEPMAN, paragraph 6310 concerning suspension.

e. \_\_\_\_ If the board recommends SEPARATION, the board  
recommends that the respondent:

- (1) \_\_\_\_ **SHOULD BE** retained in the IRR.
- (2) \_\_\_\_ **SHOULD NOT BE** retained in the IRR.
- (3) \_\_\_\_ not applicable.

See MARCORSEPMAN, paragraph 6311 concerning retention in the IRR.

4. EVIDENCE OF PRESERVICE OR PRIOR SERVICE MATTERS:

- a. \_\_\_\_ The board did **NOT** consider such matters.
- b. \_\_\_\_ The board **DID** consider such matters but only on the  
issue of retention and NOT on characterization. See  
MARCORSEPMAN, paragraphs 1004.4a and b.

5. RESERVE RESPONDENT ONLY. If the board recommends general  
(under honorable conditions) or other than honorable conditions  
(OTH) for conduct in the civilian community by a Marine who, at  
the time of the conduct, was a member of the inactive Reserve and  
was not on active duty or active duty for training, the senior  
member initials one of the following:

\_\_\_\_ The board recommends a **general (under honorable  
conditions) characterization** under MARCORSEPMAN paragraph 1004.4d  
based on the following evidence that the conduct adversely  
affected overall effectiveness of the Marine Corps, including  
military morale and efficiency:\_\_\_\_\_].

\_\_\_\_ The board recommends an under other than honorable (OTH)  
characterization under MARCORSEPMAN paragraph 1004.4d based on  
the following evidence that the conduct is "service related,"  
i.e., directly affected performance of military duties:\_\_\_\_\_].

6. MINORITY REPORT. \_\_\_\_ NONE//\_\_ SEE ENCLOSURE TO BOARD'S REPORT.



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7. SIGNATURES. Only members concurring in all board findings and recommendations sign below. Other members sign a minority report.

\_\_\_\_\_  
Signature of Senior MemberDate

\_\_\_\_\_  
Signature of MemberDate

\_\_\_\_\_  
Signature of MemberDate

MARFORRES LEGAL SOP

UNIT LETTERHEAD

SSIC  
Code  
Date

From: Senior Member  
To: Convening Authority

Subj: ADMINISTRATIVE DISCHARGE BOARD REPORT: FINDINGS AND  
RECOMMENDATIONS IN THE CASE OF (Respondent's Grade, Name,  
SSN/MOS, Component)

Ref: (a) MCO P1900.16F (MARCORSEPMAN)

Encl: (1) Record of board hearing  
(2) Minority report **[if any]**

1. As directed, an administrative discharge board convened in this case to hear allegations against the respondent and to make findings and recommendations.

2. The facts and circumstances and supporting documents which are the basis for the board's findings and recommendations are in the record (enclosure (1)).

3. The senior member initialed the following findings and recommendations, all reached in closed sessions of the board, and announced the findings and recommendations at the hearing as follows:

a. FINDING: EVIDENCE CONSIDERED. The specific evidence considered for each act or omission alleged in the notification was all government and respondent exhibits and testimony of all witnesses.

b. FINDINGS: PREPONDERANCE OF THE EVIDENCE

(1) \_\_\_\_\_ The board determined by a majority vote that the preponderance of the evidence:

(2) \_\_\_\_\_ **DOES NOT** prove any of the homosexual acts or statements alleged in the notification. (Senior member must check C1(a) below).

Figure 5-15 -- Administrative Discharge Board Report and Findings  
and Recommendations Worksheet: HOMOSEXUAL CONDUCT

MARFORRES LEGAL SOP

Subj: ADMINISTRATIVE DISCHARGE BOARD REPORT: FINDINGS AND  
RECOMMENDATIONS IN THE CASE OF (Respondent's Grade, Name,  
SSN/MOS, Component)

(2) \_\_\_\_\_ **PROVES ALL** acts or omissions alleged in the  
notification.

(3) \_\_\_\_\_ **PROVES ONLY** the following act(s) or omission(s)  
alleged in the notification: \_\_\_\_\_.

c. RECOMMENDATIONS. By majority vote, the board recommends:

(1) \_\_\_\_\_ **RETENTION** in the Marine Corps (Reserve) for the  
following reason:

(a) \_\_\_\_\_ the evidence does not prove the statements  
were made or that the acts occurred, or;

(b) \_\_\_\_\_ the evidence proves the statements were made  
or the acts occurred, but the Respondent rebutted the presumption  
that he engages in, attempts to engage in, has a propensity to  
engage in, or intends to engage in homosexual acts.

(2) \_\_\_\_\_ **SEPARATION** from the Marine Corps (Reserve)  
since the board finds that the evidence proves one or more of the  
statements were made or acts occurred AND that the respondent did  
not rebut the presumption that the respondent engages in,  
attempts to engage in, has a propensity to engage in, or intends  
to engage in homosexual acts.

(3) \_\_\_\_\_ If the board recommends **SEPARATION**, it  
recommends the following CHARACTERIZATION:

(a) \_\_\_\_\_ honorable.

(b) \_\_\_\_\_ general (under honorable conditions).

(c) \_\_\_\_\_ other than honorable, only if the  
respondent committed, attempted, or solicited a homosexual act:

1. \_\_\_\_\_ by force, coercion, or intimidation;

2. \_\_\_\_\_ with a person under 16 years;

3. \_\_\_\_\_ with a subordinate in circumstances  
that violate customary military superior/subordinate  
relationships;

Figure 5-15 -- Administrative Discharge Board Report and Findings  
and Recommendations Worksheet: HOMOSEXUAL CONDUCT

MARFORRES LEGAL SOP

4. \_\_\_\_\_ openly in public view;
5. \_\_\_\_\_ for compensation;
6. \_\_\_\_\_ aboard a military vessel or aircraft;
7. \_\_\_\_\_ in a location subject to military control under aggravating circumstances, noted in the finding, that adversely affect discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

4. PRESERVICE OR PRIOR SERVICE MATTERS:

- a. \_\_\_\_\_ The board did **NOT** consider such matters.
- b. \_\_\_\_\_ The board **DID** consider such matters but only on the issue of retention and NOT considered on characterization. See MARCORSEPMAN, paragraphs 1004.4a and b.

5. RESERVE RESPONDENT ONLY. If the board recommends general or other than honorable (OTH) characterization for conduct in the civilian community by a Marine who, at the time of the conduct, was a member of the inactive Reserve and was not on active duty or active duty for training, the senior member initials on of the following:

- a. \_\_\_\_\_ The board recommends a **general (under honorable conditions) characterization** under MARCORSEPMAN paragraph 1004.4d based on the following evidence that the conduct adversely affected overall effectiveness of the Marine Corps, including military morale and efficiency:  
\_\_\_\_\_.

- b. \_\_\_\_\_ By board recommends an **other than honorable (OTH) characterization** under MARCORSEPMAN paragraph 1004.4d based on the following evidence that the conduct is "service related," i.e., directly affected performance of military duties:  
\_\_\_\_\_.

6. MINORITY REPORT. \_\_\_ NONE//\_\_\_ SEE ENCLOSURE TO BOARD'S REPORT.

7. SIGNATURES. Only members concurring in all board findings and recommendations sign below. Other members sign a minority report.

\_\_\_\_\_  
Signature of Senior Member

\_\_\_\_\_  
Date

Figure 5-15 -- Administrative Discharge Board Report and Findings  
and Recommendations Worksheet: HOMOSEXUAL CONDUCT

MARFORRES LEGAL SOP

\_\_\_\_\_  
Signature of Member

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Member

\_\_\_\_\_  
Date

SUMMARIZED RECORD OF BOARD HEARING

\_\_\_\_\_  
Respondent's Name) (SSN) (Grade)

\_\_\_\_\_  
(Organization) (Component)

The board met at (location) at (time) hours, (date), 20\_\_\_\_  
pursuant to the appointing order(s) of (title and command of  
convening authority).

The following persons named in the appointing order(s) were  
present:

Board members: (indicate grade, name, service, and component  
(USMR or USMCR))(identify senior member)

Recorder (name, grade, service, and legal qualifications)

Counsel for respondent: (name, grade, service and legal  
qualifications of military counsel) (civilian counsel name and  
qualifications) [NOTE: If respondent waived representation by  
counsel, state as follows: The respondent stated a desire to  
represent himself without counsel. The senior member inquired  
and was satisfied that the respondent's waiver of representation  
by counsel was knowing and voluntary.]

(The following) person(s) named in the appointing order(s)  
(was) (were) (absent) (absent with the express consent of the  
convening authority): (Indicate grade, name, and armed force of  
each board member absent).

The respondent was (absent) (present). (NOTE: If respondent  
was absent, indicate specific reason, e.g., waived personal  
appearance in writing; absent after notification; confined, etc).

The senior member determined that the respondent had been  
properly advised of administrative discharge board rights and

FIGURE 5-16 -- SUMMARIZED RECORD OF BOARD HEARING

MARFORRES LEGAL SOP

procedures under MARCORSEPMAN, paragraphs 6303 and 6304. The respondent (waived) (requested) the reading of rights before the Board. The senior member (accepted the respondent's waiver of explanation of rights) (explained the rights).

The senior member advised the board members of their duties, the applicability of Article 31(b), UCMJ, to the proceedings, and the procedures to be followed as outlined in Section 3 of Part C of Chapter 6 of the MARCORSEPMAN.

(ADD IF APPLICABLE) The senior member advised the board of the special rules for cases involving homosexual conduct, including reference to Congressional findings.

The recorder and respondent were given the opportunity to challenge any member of the board for cause. (Neither challenged any member for cause.) (The (recorder) (respondent) (challenged the following member(s) for cause:\_\_\_\_\_.) (The challenges were (granted) (denied)).

The recorder and respondent were permitted to make motions and opening statements. (No motions were made.) (Motions were made and decided as follows:) (Both recorder and counsel for the respondent made opening statements) (The recorder waived opening statement.)

The recorder offered the following government exhibits (marked "GE"):

GE-\_\_: Appointing order.  
GE-\_\_: Modification to appointing order (if any).  
GE-\_\_: Notification package: notice, AOR, BCNR/NDRB.  
GE-\_\_: [If respondent is absent: written notice of hearing (see Figure 5-11 of this Manual); include receipt for notice if delivered in person; include PS Form 3811 (green card) if notice was mailed]  
GE-\_\_: Standard pages from SRB (including DD Form 4)  
GE-\_\_: DD Form 1966.  
GE-\_\_: \_\_\_\_\_  
GE-\_\_: \_\_\_\_\_  
GE-\_\_: Privacy Act statement (if respondent testifies)

The exhibits were admitted with (without objection) (with objection(s) as follows:

NUMBERREASON FOR OBJECTIONDECISION BY BOARD  
GE-xxxxx (Admitted) (Excluded)

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The Senior member authorized certified true copies of the exhibits to be included in the record in lieu of the originals.

The respondent offered the following respondent's exhibits (marked "RE"):

RE A: xxx  
RE B: xxx

The exhibits were admitted (with) (without objection) (with objection(s) as follows:)

### NUMBERREASON FOR OBJECTIONDECISION BY BOARD

RE-xxxxx (Admitted) (Excluded)

The senior member authorized certified copies of the exhibits to be included in the record in lieu of the originals.

The government called (no) (the following) witness(es), who (was)(were) sworn and testified as follows:

### **SUMMARY OF WITNESS TESTIMONY**

The respondent called (no) (the following) witness(es), who (was)(were) sworn and testified as follows:

### **SUMMARY OF WITNESS TESTIMONY**

The respondent [(did not testify or submit a statement) (testified under oath) (made an unsworn oral statement) (submitted a (sworn) (unsworn) (written statement))].

The recorder presented no rebuttal evidence (presented the following rebuttal evidence:). The counsel for the respondent presented no further evidence (presented the following evidence:). The board (called no witnesses and presented no evidence) (called the following witnesses) (presented the following evidence:).

The recorder and counsel for respondent made closing argument. Counsel for the respondent (did) (did not) make a closing argument. The recorder (did) (did not) make rebuttal argument.

The senior member instructed the members concerning voting procedures.

(ADD IF APPLICABLE. The senior member advised the board concerning the restrictions imposed by paragraphs 1004.4a and b of the MARCORSEPMAN concerning prior and preservice matters.)

FIGURE 5-16 -- SUMMARIZED RECORD OF BOARD HEARING

## MARFORRES LEGAL SOP

(ADD IF APPLICABLE. The senior member advised the board concerning the restrictions imposed by paragraph 1004.4d of the MARCORSEPMAN concerning misconduct by a Reservist not on active duty or active duty for training at the time of the misconduct.)

(ADD IF APPLICABLE. The senior member advised the board of the special rules for cases involving homosexual conduct.)

Neither party had anything further to offer. The board closed at \_\_\_\_\_ hours, \_\_\_\_\_ 20 \_\_\_\_\_. The board opened at \_\_\_\_\_ hours, \_\_\_\_\_ 20 \_\_\_\_\_.

The senior member announced the findings and recommendations of the board by reading from the findings and recommendations worksheet. The worksheet will also be the board's report. The board adjourned at \_\_\_\_\_ hours, \_\_\_\_\_ 20\_\_\_\_.

AUTHENTICATION OF RECORD

This is a substantially accurate record of the board hearing.

---

Senior Member
Date

Recorder \_\_\_\_\_ Date \_\_\_\_\_

FIGURE 5-16 -- SUMMARIZED RECORD OF BOARD HEARING



**UNSATISFACTORY PARTICIPATION WORKSHEET**

Name of Marine: \_\_\_\_\_

Command: \_\_\_\_\_

Steps taken after Marine missed the following number of drills  
(circle/indicate number of drills): one //two//\_\_\_\_\_

**I. PHONE CALLS [TWO MANDATORY; ONE IF NUMBER IS DISCONNECTED]**

A. Date: \_\_\_\_\_ Number called: \_\_\_\_\_  
Person making call: \_\_\_\_\_  
Result: \_\_\_No answer//\_\_\_disconnected//\_\_\_left message  
\_\_\_message never returned//\_\_\_reached Marine and  
discussed the following: \_\_\_\_\_

B. Date: \_\_\_\_\_ Number called: \_\_\_\_\_  
Person making call: \_\_\_\_\_  
Result: \_\_\_No answer//\_\_\_disconnected//\_\_\_left message  
\_\_\_message never returned//\_\_\_reached Marine and  
discussed the following: \_\_\_\_\_

**II. UNSATISFACTORY PARTICIPATION LETTERS [MINIMUM OF ONE]**

A. Date mailed: \_\_\_\_\_  
Mailed by: \_\_\_\_\_  
Address: \_\_\_\_\_  
Result: \_\_\_No response//\_\_\_unclaimed or undeliverable  
Marine responded as follows: \_\_\_\_\_

B. Date mailed: \_\_\_\_\_  
Mailed by: \_\_\_\_\_  
Address: \_\_\_\_\_  
Result: \_\_\_No response//\_\_\_unclaimed or undeliverable  
Marine responded as follows: \_\_\_\_\_

\_\_\_\_\_  
Signature of person supplying information Date

Grade: \_\_\_\_\_ Billet: \_\_\_\_\_

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MARFORRES LEGAL SOP

CHAPTER 6

JAGMAN INVESTIGATIONS

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# MARFORRES LEGAL SOP

## CHAPTER 6

### JAGMAN INVESTIGATIONS

#### 6000. INTRODUCTION

1. This chapter is designed to assist COs and IOs with the administrative investigation process as it pertains to non-criminal misconduct. Guidance on how to conduct a criminal investigation is available in Chapter 4 of this SOP.

2. JAGMAN investigations provide COs with information concerning accidents and other incidents involving their personnel, or otherwise affecting their commands. There is nothing that will serve and protect the Marine Corps interests more effectively than a thorough, comprehensive, and properly documented investigation. Information developed during JAGMAN investigations will often be used by attorneys representing the interests of the Department of the Navy in civil litigation and by medical authorities determining the eligibility of personnel for military medical care. There is no substitute for a working knowledge of Chapter II of the JAGMAN. This directive supplements the JAGMAN by providing practical guidance, sample formats, and situation-specific checklists. Further assistance is available from the Office of the MARFORRES, SJA.

#### 6001. TYPES OF ADMINISTRATIVE JAGMAN INVESTIGATIONS

1. PI. The PI is a quick investigation tool used to determine whether an incident is serious enough to warrant a command investigation (CI). There are no set requirements on how a PI is conducted or drafted, and sometimes a complete, written PI can be used as the final investigation for minor incidents. Commanders are encouraged to consider initially utilizing the PI to determine whether a more formal command investigation is warranted.

2. CIs. The most common investigation is the CI. The CI is a formal investigation with strict content and format requirements. Its purpose is to search out, develop, assemble, analyze, and record all available information relative to the incident under investigation. The information contained in the CI provides the basis for various actions designed to improve command management and administration. Common types of CIs are Line of Duty (LOD)/Misconduct, motor vehicle accidents, death, and aircraft mishap investigations. One investigation may be used to cover multiple JAGMAN requirements. For instance, an investigation

into a training accident may also be used as an LOD/Misconduct investigation as long as the required findings are made in the investigation regarding the injured servicemember.

3. LITIGATION-REPORT INVESTIGATIONS. The litigation-report investigation is appropriate whenever the primary purpose of the investigation is to prepare and defend the legal interests of the Navy in claims proceedings or civil litigation.

#### 6002. PI

1. Any CO can convene a PI. The CA may conduct a PI personally, but normally should appoint a member of the command to do so. There are no specific requirements governing how to conduct the inquiry. The goal is to gather enough information to make an informed decision regarding the necessity of a more formal investigation. See paragraph 6003.6 of this SOP for guidance on conducting the investigation. The PI should not take longer than three (3) working days. See Figure 6-1 for a PI checklist. Upon completion of the PI, a report is tendered to the CA. The report need not be in writing, but some form of limited documentation is advisable. See Figure 6-2 for a sample PI report. JAGMAN 0203.

2. COMMAND OPTIONS. Upon reviewing the PI, the CA has the following options:

a. Take no further action when the incident is of little interest to anyone outside the immediate command. Documentation of the PI and the command decision is advisable.

b. Convene a CI. JAGMAN 0204a(2)(b).

c. Convene a litigation-report investigation. Consultation with the "cognizant judge advocate" is required. JAGMAN 0204a(2)(c).

d. Convene a court or BOI. Within MARFORRES, only GCMCA's are empowered to convene a court or a BOI.

3. Reporting the Results of PIs. Forwarding of PIs is normally within the sole discretion of the CA. However, if the PI involves a death, lost or stolen property, or may result in a future claim against the Government, a copy must be forwarded to MARFORRES OSJA for filing.

#### 6003. CIs

1. When Required. CIs are likely to be the appropriate investigative tool for incidents involving aircraft mishaps, explosions, fires, loss of government funds or property, firearm

accidents, security violations, significant injury to servicemembers, and deaths of servicemembers that occur while on active duty.

2. When Not Required. A CI shall not be used for "major" incidents (see JAGMAN Appendix A-2-a for definition) or incidents that are likely to result in claims or litigation against the Navy or the United States. If a "major" incident occurs, the GCMCA will assume cognizance of the case and decide whether to convene a court or BOI. If a claim or litigation issue appears to be the primary purpose for the investigation, then a litigation-report investigation is required. See section 6005.

3. Rules on Convening. A CI will be convened in writing by the CA. See Figure 6-3 for a sample convening order. When the CA feels that the investigation of an incident is impractical or inappropriate for the command to investigate, another command may be requested to conduct the investigation. JAGMAN 0208 should be reviewed prior to any CI being convened.

4. Multiple Commands Involved. When more than one command is involved, a single investigation should be conducted. This will require coordination and cooperation between the commands. If difficulty arises in coordinating a joint effort, the matter should be referred to the first common superior in the chain of command. JAGMAN 0208c(3).

5. Time Periods. The CA will prescribe when the report is due. Under typical circumstances, 30 days from the date of the convening order is recommended. In some cases, such as death, 20 days or less is recommended. The CA may grant extensions as needed. Requests and authorizations for extensions should be in writing and must be noted in the preliminary statement of the final report. JAGMAN 0208f.

6. Conducting the Investigation. The focus of the investigation is to determine the "who, what, when, where, how, and why" of an incident. The Investigating Officer (IO) should determine the purpose and methodology of the investigation before starting to collect evidence. The IO should review Chapter II of the JAGMAN prior to beginning his investigation. Figure 6-4 provides a basic checklist common to all CIs. Figure 6-5 gives guidance on drafting CI reports. Figure 6-6 provides the format for a CI. Figures 6-8 through 6-18 of this SOP are provided to help the IO determine what additional information will be required for specific types of CIs and should be utilized in conjunction with figure 6-4.

a. Gathering Evidence. The IO may collect, consider and include in the record any matter relevant to the investigation

that is believable and authentic. Photographs, maps, sketches, etc. are always helpful tools for reviewing authorities in understanding what has occurred. So too are present sense impressions (i.e., noise, texture, smell, observations) that are not adequately portrayed in other evidence. The IO may record these impressions in a simple memorandum for inclusion in the CI record.

b. Handling Witnesses. The IO may obtain information by personal interview, correspondence, or telephone inquiry. If a witness is unable to review and/or sign a statement, the IO may simply make a summary of the conversation and certify it to be accurate. Before interviewing witnesses, the IO must ensure he/she understands when and what rights advisement may be required; for example: if the IO suspects a military member has committed a criminal offense, Article 31, UCMJ, warnings are required (Figure 6-12); when interviewing a servicemember concerning the incurring of an injury, warning under JAGMAN 0220c is required (Figure 6-13); if the IO asks for personal information (Social Security Number), Privacy Act (PA) warnings are NECESSARY (Figure 6-14). Each witness should be interviewed separately. Let the witness tell what happened; do not ask questions that suggest answers. Ask for clarification if the witness is speaking in broad or vague terms (i.e., "He was drunk"; "What gave you that impression?"; "He had an odor of alcohol about him, his eyes were bloodshot, he was slurring his speech and unable to maintain his balance.") Try to obtain as much information during the interview as possible; the relevance of a particular fact may not become clear until later in the investigation.

c. Writing the Investigation. The key to writing a good CI is organization and attention to proper format. The CI must contain a preliminary statement, findings of fact, opinions, and recommendations. IOs' must review Chapter 2 of the JAGMAN for specific guidance on the proper format and the contents of a CI. Remember, the CA and reviewing authorities will want to understand the incident from reading of the facts. Often a recitation of the facts in chronological form is easiest to follow. Keep your findings of fact as clear and concise as possible and ensure that they are supported by at least one enclosure to the investigation. In drafting opinions, be sure to cite at least one relevant finding of fact. Every enclosure and every finding of fact must be referred to once in the investigation. Recommendations should address any issues of responsibility and accountability. See figures 6-4, 6-11, and 6-15 to 6-18 for CI checklists. See figure 6-6 for the format for a CI.



7. Command Action and Endorsement of the CI. Upon completing the investigative report, the IO submits the report to the CA, who reviews it and takes one of the following actions:

a. Returns it to the IO for further inquiry or corrective action, noting any incomplete, ambiguous, or erroneous action of the IO.

b. Determines the investigation is of no interest to anyone outside the command and files the original investigation directly with the OSJA, MARFORRES as an internal report.

c. Determines the investigation is of interest to higher authority and forwards a copy via the chain of command. If the investigation is forwarded to the respective CG, a copy of the report should be sent to the OSJA, MARFORRES. Unless otherwise indicated in this order or higher authority, there is no requirement that a CI receive a legal sufficiency review by either a Site JA or a SJA, unless deemed appropriate by the CA or higher.

8. Command Endorsements. If the CA determines that the CI is as complete and comprehensive as required, he will then endorse the CI. The CA's endorsement will set forth appropriate comments, recording approval or disapproval, in whole or in part, of the investigation's findings, opinions, and recommendations. In line of duty/misconduct investigations, the CA is required to specifically approve or disapprove the line of duty/misconduct opinion. If the CA corrects, adds, or disapproves findings of fact, opinions, or recommendations, the following language should be added to the endorsement as appropriate:

a. The findings of fact are hereby modified as follows:  
(modification).

b. The following additional findings of fact are added:  
(numbers start after the last findings of fact in the basic investigation).

c. Opinion \_\_\_\_ in the basic correspondence is not substantiated by the findings of fact because \_\_\_\_\_ and is therefore disapproved (modified to read as follows:).

d. The following additional opinions are added: (numbers start after the last opinions in the basic investigation).

e. Recommendation \_\_\_\_ is not appropriate for action at this command; however, a copy of this investigation is being furnished to \_\_\_\_\_ for such action as deemed appropriate.

f. Additional recommendations: (numbers start after the last recommendation in the basic investigations).

g. The action recommended in recommendation \_\_\_\_\_ has been accomplished by \_\_\_\_\_ (has been forwarded to \_\_\_\_\_ for action; etc.).

9. Routing the CI. Unless otherwise indicated in this order or by higher authority, the forwarding of any CI up the chain of command is at the CA's discretion. A copy of the complete CI must be provided to OSJA, MARFORRES, for filing, even if no further action is deemed necessary by the CA.

10. Advance Copies. Advance copies of CIs are those investigations that are complete, but pending the CAs first endorsement. Advance copies of CIs shall be forwarded by the CA to OSJA, MARFORRES in the following cases:

a. For CI's involving serious injuries, deaths, or significant damage to government property (excluding aircraft).

b. When the subject of the CI involves significant potential claims against the Government, permanent disability, or death; or when significant media attention is expected.

11. Retention of CI's. The CA must maintain a copy of all CI's for a minimum of 2 years. However see JAGMAN 0208(h)(5) for investigative reports of criminal misconduct.

12. Release of CI's. Any requests for copies of, or information contained in, CI's shall be forwarded to the cognizant SJA or the OSJA, MARFORRES, for processing. Only CGs have the authority to release CIs, and no CI should be released without prior approval of the cognizant SJA.

13. LOD/Misconduct Findings. To assist in the administration of naval personnel issues, the CO is required to inquire into certain cases of injury or disease incurred by members of his or her command. When these inquiries are conducted, the CO is required to make what is referred to as a LOD/Misconduct determination. LOD/ Misconduct determinations can affect several benefits and rights administered by the Department of the Navy, including: extension of enlistment, withholding of longevity, retirement multipliers for the time missed, denial of disability retirement, severance pay, and VA benefits. As in most matters, the type of inquiry and the degree of formality of the report will depend upon the circumstances of the case.

a. When LOD/Misconduct Determinations are Required. Per JAGMAN 0220, findings concerning LOD/Misconduct must be made in

every case in which a member of the naval service incurs a disease or injury that:

(1) Might result in permanent disability.

(2) Results in the physical inability to perform duty for a period exceeding 24 hours (as distinguished from a period of hospitalization for evaluation or observation).

(3) Has resulted in death while on active duty, regardless of duty status (i.e., leave or liberty).

b. What Constitutes "LOD?" Injury or disease incurred by naval personnel while on active duty service is presumed to have been incurred "in LOD" unless there is clear and convincing evidence that it was incurred:

(1) As a result of the member's own "misconduct." There must be clear and convincing evidence that the injury was intentionally incurred or the result of willful negligence that demonstrates a reckless disregard for foreseeable and likely consequences. JAGMAN 0223 provides the definition for "misconduct."

(2) While avoiding duty by deserting.

(3) While absent without leave, and such absence materially interfered with the performance of required military duties (generally, in excess of 24 hours).

(4) While confined under sentence of a court-martial that included an un-remitted dishonorable discharge.

(5) While confined under sentence of civil court following conviction of an offense that is defined as a felony by the law of the jurisdiction where convicted.

c. Type of Investigation Required

(1) PI's Required. At a minimum, each injury or disease requiring LOD/Misconduct determinations must be initially reviewed through use of a PI. JAGMAN 0229a. Unless an adverse determination is made (in which case a CI must be done), a copy of the PI report must be delivered to the appropriate medical department for inclusion in the health or dental record.

EXCEPTION: If the medical officer and the CO are of the opinion that the inquiry or disease (not death) was incurred "in LOD" and "not as a result of the member's own misconduct," **and** the appropriate entries stating such are entered in the health record, no investigation is required, unless directed by the GCMCA. JAGMAN 0229c.

(2) CI's Required (JAGMAN 0229d)

(a) The injury or disease was incurred in such a way that suggests a finding of "misconduct" or "not in LOD" might result.

(b) There is a reasonable chance of permanent disability and the CA considers an investigation essential to ensuring an adequate official record.

(c) Anytime the CA considers a CI essential to ensuring an adequate official record.

(d) Endorsing of LOD/Misconduct Determinations. The CA must specifically comment on the LOD/Misconduct opinion and take one of the following actions:

1. If the CA concludes that the injury or disease was incurred "in LOD" and not "due to a member's own misconduct", that shall be expressed regardless of whether it concurs with the IO's opinion. JAGMAN 0230a(1).

2. If the convening or higher authority believes the injury or disease was incurred not "in LOD" or "due to the member's own misconduct," the member must be informed of the preliminary determination and afforded an opportunity, not to exceed 10 days, to submit any desired information to try and convince the CA otherwise. The member may be permitted to review the investigative report before providing any information. If the member decides to present information, it shall be considered by the CA and appended to the record. If the member elects not to provide information, or the 10-day period lapses without submission, then such shall be noted in the endorsement. JAGMAN 0230a(2).

d. Required Warning. Any person in the armed forces, prior to being asked to make or sign any statement relating to the origin, incidence, or aggravation of any disease or injury that he or she has suffered, shall be advised of the right not to make such a statement. JAGMAN 0220c. See Figure 6-13 for a sample form.

e. Routing. All CI's that contain LOD/Misconduct determinations shall be forwarded to the respective SJA or OSJA, MARFORRES for a legal sufficiency review. The appropriate GCMCA shall indicate approval, disapproval, or modification of conclusions concerning misconduct and line of duty. A copy of such action will be returned to the CA so that appropriate entries may be made in the member's service and medical records. JAGMAN 0230b(1).

f. Special Consideration for Reserve Cases

(1) Notice of Eligibility (NOE). NOE is a document authorizing continued medical/dental care and incapacitation pay for qualifying Marine Corps Reservists. Medical/dental care is provided at a military medical/dental facility, veterans' hospital, or civilian facility for care and treatment of an injury, illness, or disease incurred or aggravated in the line of duty. MCO 1770.2 provides detailed guidance on the applicability and eligibility for benefits to members of the Marine Corps Reserve. An NOE will address an injury, illness, or disease incurred or aggravated between the time the Marine Corps Reservist leaves his primary IDT location and until the Marine returns to the primary residence along the most direct route.

(2) Per DODDir 1241.1 of 3 December 1992, CA's must issue "interim" LOD/misconduct determinations within 7 days of being notified that a Reservist not on the active duty list has an incapacitating injury or illness incurred or aggravated while on active duty (including leave and liberty), active duty for training, inactive duty training, or travel to or from such duty. This interim determination is intended to ensure that the Reservist's incapacitation pay can be started without delay and must be immediately forwarded to the NOE issuing authority. If the final LOD/misconduct determination is adverse to the member, immediate action must be taken to stop incapacitation benefits. JAGMAN 0231. (See SECNAVINST 1770.3 series for further information.)

6004. DEATH CASES

1. As a general rule, the death of a servicemember must be investigated through the use of a CI. NCIS must be notified per SECNAVINST 5520.3B in any death case involving actual or suspected criminal conduct before initiating the CI.

2. Limited Death Investigations. Where the death of a servicemember occurred at a location within the U.S. not under military control, while the member was not on active duty, and there is no discernable connection between the circumstances of the death and the naval service, the command need only obtain a copy of the investigation conducted by civilian authorities and forward it to the OSJA, MARFORRES, as an internal report. JAGMAN 0234c.

3. Death Investigations and LOD/Misconduct Opinion. All deaths of servicemembers incurred while on active duty must be the subject of a LOD/misconduct investigation. Such investigation must be conducted with the assistance of a SJA. Therefore, in all cases involving the death of a servicemember while on active duty, OSJA, MARFORRES shall be contacted for advice. JAGMAN 0236.

4. Release of Death Investigations. With limited exceptions, advance copies of death investigations may be released to the next of kin (NOK) after the first flag officer in the chain of command has endorsed the investigation. Upon receipt of a request from the NOK, notify OSJA, MARFORRES. JAGMAN 0233d.

5. Independent Reviews of Death Investigations that Call into Question the Deceased's Conduct. Prior to endorsement of an investigation that calls into question the deceased's conduct, the CA may want the report to be reviewed to ensure thoroughness, accuracy of the findings, and fairness to the deceased member. The individual selected to conduct this review shall have no previous connection to the investigative process and must be outside the CA's immediate chain of command. To the extent possible, the reviewer should possess training, experience, and background sufficient to allow critical analysis of the factual circumstances. The reviewer is not to act as the deceased's representative, but rather provide critical analysis from the perspective of the deceased, tempered by the reviewer's own experience, training, and education. If the reviewer believes comments are warranted, such comments shall be completed and provided to the CA within 10 working days of the report's delivery to the reviewer. The CA is to consider any comments submitted by the reviewer and take any action deemed appropriate. The comments shall be appended to the investigative report. JAGMAN 0238.

6005. LITIGATION-REPORT INVESTIGATIONS. A litigation-report investigation can only be convened after consultation with the cognizant SJA or OSJA, MARFORRES. This type of investigation must be conducted under the direction and supervision of a JA. Failure to follow these requirements could result in the investigation not being protected from disclosure to anyone who does not have an official need to know. Completed litigation reports are ultimately forwarded to the JAG of the Navy.

1. Conducting the Investigation

a. The goal of the litigation-report investigation is to document only the facts surrounding the incident. Opinions and recommendations shall never be made part of a litigation-report investigation unless specifically required or written by the supervising JA. The IO must consult with the supervising JA and decide what the purpose and methodology of the investigation is before starting to collect evidence. The IO should review all applicable checklists contained in Chapter II of the JAGMAN and the Figures of this SOP to determine what specific information is required. Use the format at Figure 6-10 of this SOP for guidance on writing a litigation report.

b. Special Rules for Witnesses Statements. A litigation-report investigation shall not contain signed witness statements. The IO should personally interview all witnesses and prepare an IO's Summary of Interview.

c. Work Product Protection. The IO must properly mark the litigation-report investigation report. See, JAGMAN 0209e(3). Copies of the report and any working notes of the IO must be maintained in files marked "FOR OFFICIAL USE ONLY: LITIGATION/ATTORNEY WORK PRODUCT" and safeguarded against improper disclosure. Only the JAG of the Navy may release litigation-report investigations or any portion thereof.

2. Command Action and Endorsement of Litigation-Report Investigations. Upon receiving the litigation-report investigation, the CA reviews the documents and takes one of the following actions:

a. Return the investigation to the supervisory JA for further inquiry.

b. Endorse and forward the report to the OSJA, MARFORRES. JAGMAN 0209g(2). Unlike the endorsement of a CI, the CA may only make limited comments in endorsing litigation-report investigations. The CA may comment on those aspects of the report that bear on the administration or management of the command, including any corrective action taken. The CA shall not normally approve or disapprove any of the findings of fact. JAGMAN 0209g(1). The CA's endorsement must be marked "FOR OFFICIAL USE ONLY: LITIGATION/ATTORNEY WORK PRODUCT."

c. Litigation-Report investigations are time-sensitive documents that require expeditious processing. Endorsing commands will detail the sources of all delays in the processing of these investigations.

3. Retention of Litigation-Report Investigations. The original CA is required to retain a copy of the litigation-report investigation, in a file marked "FOR OFFICIAL USE ONLY: LITIGATION/ATTORNEY WORK PRODUCT" and safeguard against improper disclosure. JAGMAN 0209(g).

4. Release of litigation-report investigations. For all litigation-report investigations, the JAG retains release authority. Convening and reviewing authorities are not authorized to release litigation-report investigations or their contents. JAGMAN 0219c.

6006. CLAIMS AND INVESTIGATIONS. Any time an incident results in a civilian claim being filed or when a commander believes the incident will give rise to a future claim against the government,

an investigation must be conducted. The type of investigation (PI, CI, Lit-Rep) will be based on the particular circumstances surrounding the incident. Commands are encouraged to contact the Claims and IO, OSJA, MARFORRES, for advice on which investigation is most appropriate. The investigation, at a minimum, must provide enough information to assist the naval claims adjudication authority in determining what, if any, payments are to be made. All investigations surrounding civilian claims must be routed through OSJA, MARFORRES. Additional information regarding claims are in Chapter 7.



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IOs  
PI CHECKLIST

- \_\_\_\_\_ CA appointing order specifically directs a "PI."
- \_\_\_\_\_ IO understands the purpose and scope of the investigation.
- \_\_\_\_\_ IO confirms the subject of the inquiry does not require a litigation-report or LOD/Misconduct investigation.
- \_\_\_\_\_ Interview any witness and gather any documentary information relevant to the inquiry that will provide information to help understand what occurred and enable you to make an informed recommendation to the CA. See paragraph 6003.6 for guidance on conducting the investigation.
- \_\_\_\_\_ IO confirms that the inquiry satisfies the CA appointing order.
- \_\_\_\_\_ All enclosures/statements utilized are made part of the inquiry.
- \_\_\_\_\_ IO makes the report to the CA in three days, usually in writing, but not required.
- \_\_\_\_\_ If written, IO signs and dates the report.

Figure 6-1 -- Sample PI Checklist

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UNIT LETTERHEAD

SSIC  
Code  
Date

SAMPLE PI REPORT

From: (Name and rank of IO)  
To: (CA)

Subj: PRELIMINARY INQUIRY (PI) INTO (DESCRIPTION OF INCIDENT)

Ref: (a) JAGMAN 0203

Encl: (1) Attach all appointing orders, extensions, supporting documents, statements, and evidence as enclosures.

1. This report completes the PI conducted in accordance with reference (a) into (description of incident).

2. Personally contacted: (List individuals with name, rank, title, unit, and telephone number).

3. Materials reviewed: (List documents, objects, materials, tangibles reviewed, and probable evidence value. Location where evidence is stored together with name and phone number of the custodian).

4. Summary of findings: (Summary should not extend beyond one paragraph and should summarize both what is known and unknown about the event in question).

5. Recommendation: (Choose one: consult a judge advocate; no further investigation warranted; command investigation; litigation-report investigation; board of inquiry; or court of inquiry).

---

Name, rank, unit, telephone

(Note: attachments may be added to the report as desired.)

Figure 6-2 -- Sample PI Report

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UNIT LETTERHEAD

SSIC  
Code  
Date

SAMPLE CI CONVENING ORDER

From: (CA)  
To: Captain, USMC

Subj: COMMAND INVESTIGATION OF THE FIRE THAT OCCURRED AT  
\_\_\_\_\_ ON \_\_\_\_\_ AUGUST 20 \_\_\_\_\_

Ref: (a) JAGMAN

1. Per Chapter 2 of reference (a) you are appointed to inquire into the facts and circumstances surrounding the fire that occurred at on (Date).

2. Investigate the cause of the fire, resulting injuries and damages, and any fault, neglect, or responsibility therefore, and recommend appropriate administrative or disciplinary action, Report your findings of fact, opinions, and recommendations in letter form by (Date), unless an extension of time is granted. If you have not previously done so, read Chapter 2 of reference (a) in its entirety before beginning your investigation.

3. You may seek legal advice from \_\_\_\_\_ during the course of your investigation.

4. By copy of this appointing order, Commanding Officer, Headquarters Company, is directed to furnish necessary clerical assistance.

Colonel, U.S. Marine Corps

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### CI CHECKLIST

#### I. GETTING STARTED

- \_\_\_\_\_ CA appointing order specifically directs a "CI".
- \_\_\_\_\_ IO understands the purpose and scope of the investigation.
- \_\_\_\_\_ IO reads Chapter 2 of the JAGMAN
- \_\_\_\_\_ If the subject/issue of the investigation involves personal injury of, or damage of property to a civilian, determine if the investigation may also be considered a litigation-report (See section XXX for guidance)
- \_\_\_\_\_ If the subject(s) of the investigation were injured, determine if the investigation may also be considered a LOD/MIS Investigation. (See section XXX).
- \_\_\_\_\_ If appointed, the IO makes contact with the legal advisor before beginning the investigation. (If no legal advisor appointed and the IO needs assistance, contact the IO, OSJA, MARFORRES.)
- \_\_\_\_\_ Did this incident involved a member of the command or occurred within the command? If not, determine if you are the appropriate command to conduct the investigation?
- \_\_\_\_\_ Determine which checklists in this SOP may apply to your investigation and review them carefully to determine what additional or specific information is required.
- \_\_\_\_\_ If NCIS, FBI, or local civilian law enforcement agency is investigating see JAGMAN 0202d.
- \_\_\_\_\_ Is this considered a "major" incident? (Refer to JAGMAN Appendix A-2-a for definition).
- \_\_\_\_\_ If believed to be a "major" incident, refer to JAGMAN 0203b, 0203f, 0204a(1), and 0210e(1).
- \_\_\_\_\_ Interview any witness and gather any documents or physical evidence relevant to the matter that will provide the information necessary to help you understand what occurred and enable you to provide informed findings, conclusions, and recommendations to the CA. See paragraph 6003.6 for guidance on conducting the investigation

Figure 6-4 -- Sample CI Checklist

## II. HANDLING WITNESSES

- \_\_\_\_\_ Make a list and updated as the investigation progresses, of all possible witnesses.
- \_\_\_\_\_ Unless otherwise possible, plan on interviewing anyone suspected of committing an offense under the UCMJ last.
- \_\_\_\_\_ Determine if witnesses are transferring, going on leave, hospitalized, etc., which might take them out of the area before review of the investigation is completed.
- \_\_\_\_\_ Inform the CA, orally, with confirmation in writing, immediately upon learning that a material witness might leave the area before review of the investigation is completed.
- \_\_\_\_\_ Conduct an intensive interview of each witness, i.e., names, places, dates, and events.
- \_\_\_\_\_ Witness statements should be as factual in content as possible. If a witness makes a vague statement ("he was drunk"), try to pin down the actual facts.
- \_\_\_\_\_ If a witness is not physically available, attempt to conduct them via telephone, mail, or message.
- \_\_\_\_\_ Advise military witness suspected of an offense, misconduct, or improper performance of duty, of their rights under Article 31b.
- \_\_\_\_\_ Advise each witness prior to signing any statement relating to the origin, incident, or aggravation of any disease or injury that they suffered of their right not to sign such a statement. See JAGMAN 0221b.
- \_\_\_\_\_ JAGMAN 0216 requires that PA statements be obtained from each witness from whom personal information is taken.
- \_\_\_\_\_ Record the interview of each witness in detailed notes or by mechanical means.

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- \_\_\_\_\_ Reduce each witness' statement to a complete and accurate narrative statement.
- \_\_\_\_\_ If possible, obtain the signature of each witness, under oath and witnessed, on the narrative statement. If not possible, indicate on the statement that it represents an accurate summary or verbatim transcript statements made by the witness.
- \_\_\_\_\_ Direct witnesses subject to naval authority not to discuss their statements. Witnesses not subject to naval authority may be requested not to discuss their statements.
- \_\_\_\_\_ Review your list of possible witnesses to ensure that you have interviewed all such witnesses.

### III. DOCUMENTARY EVIDENCE

- \_\_\_\_\_ Make a list, update as the investigation proceeds, of all possible documents, to include:
  - \_\_\_\_\_ Copies of rules, regulations, instructions, and standard operating procedures
  - \_\_\_\_\_ Relevant correspondence and messages
  - \_\_\_\_\_ Personnel records
  - \_\_\_\_\_ Medical records (clinical and hospital records, death certificates, autopsy reports, etc.)
  - \_\_\_\_\_ Official logs and reports; and
  - \_\_\_\_\_ Required forms (personnel injury forms, vehicle accident reports, etc.)
- \_\_\_\_\_ Examine your list of possible documents to ensure that you have obtained all such documents available to you.
- \_\_\_\_\_ If unable to obtain a certain document, attempt to obtain it via fax, message, telephone, or mail.

### IV. OTHER EVIDENCE

- \_\_\_\_\_ Make a list of any other information that may be of assistance to reviewing authorities in understanding the incident investigated (real objects, physical locations, maps, charts, photographs, your personal observations, etc.).

Figure 6-4 -- Sample CI Checklist

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- \_\_\_\_\_ Examine your list of possible information to ensure that you have obtained all such information personally available to you.
- \_\_\_\_\_ If unable to obtain certain information, attempt to obtain it via fax, message, telephone, or mail.
- \_\_\_\_\_ Attempt to reduce such information to a form, such as photographs or sketches, which can be conveniently included in your investigative report.
- \_\_\_\_\_ Take all steps necessary to ensure that any evidence not used as an enclosure to the investigative report will be kept in an identified place, safe from tampering, loss, theft, and damage, pending review of the investigation.
- \_\_\_\_\_ Classify the report secret, confidential, etc. Omit classification unless essential. JAGMAN 0216b.

Figure 6-4 -- Sample CI Checklist

## MARFORRES LEGAL SOP

### DRAFTING THE CI REPORT

#### **I. PRELIMINARY STATEMENT**

- \_\_\_\_\_ State that all reasonably available evidence was collected or is forthcoming and that each directive of the CA has been met.
- \_\_\_\_\_ Set forth the nature of the investigation. Include the dates, location, and manner in which you went about your investigation.
- \_\_\_\_\_ Relate any delays or difficulties encountered, including non-availability of evidence or failure to interview relevant witnesses.
- \_\_\_\_\_ Explain any conflicts in evidence, which evidence is considered more reliable, and why.
- \_\_\_\_\_ Note any extensions requested and granted.
- \_\_\_\_\_ Note the limited participation by any member or advisor.
- \_\_\_\_\_ If social security numbers contained in the report were obtained from sources other than the individual (i.e., from service records), state so.
- \_\_\_\_\_ If not included with the final investigation, indicate where original items of evidence are maintained, how they are being safeguarded, and the name and phone number of the responsible custodian.
- \_\_\_\_\_ State any other information necessary for a complete understanding of the case.

#### **II. FINDINGS OF FACT.** A fact is something that is or happens.

- \_\_\_\_\_ Findings of fact are in chronological and/or logical order.
- \_\_\_\_\_ Each finding is limited to one fact.
- \_\_\_\_\_ Each finding of fact is specifically supported by at least one enclosure. (Avoid drawing conclusions from the enclosures in your findings of facts.)



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\_\_\_\_\_ All enclosures are used at least once. (If not used, remove the enclosure from the investigation.)

\_\_\_\_\_ When read together, the findings of fact tell the whole story of the incident without having to refer back to the enclosures.

**III. OPINIONS** are reasonable evaluations, inferences, or conclusions based only on the findings of facts.

\_\_\_\_\_ The appointing order requires opinions.

\_\_\_\_\_ Each opinion references at least one finding of fact that supports it.

\_\_\_\_\_ All opinions required by the convening order are included, as well as any others you feel are appropriate.

**IV. RECOMMENDATIONS** are proposals made on the basis of the opinions.

\_\_\_\_\_ The appointing order requires recommendations.

\_\_\_\_\_ All recommendations specifically required by the appointing order are included, as well as any others considered appropriate.

\_\_\_\_\_ Recommend any appropriate corrective, disciplinary, or administrative action.

\_\_\_\_\_ Enclose a draft of a punitive letter of reprimand if recommending such action.

\_\_\_\_\_ Draft and send under separate cover a draft non-punitive letter of caution if recommending such action.

## **V. SIGNING**

\_\_\_\_\_ Sign your report.

\_\_\_\_\_ Date your report.

## **VI. ENCLOSURES**

\_\_\_\_\_ Convening order is enclosure (1).

\_\_\_\_\_ The enclosures are in order of reference.

## MARFORRES LEGAL SOP

- \_\_\_\_\_ Each statement, affidavit, transcript or summary of testimony, photograph, map, chart, document, or other exhibits, was submitted as a separate enclosure?
- \_\_\_\_\_ All reproduced original documents were certified to be true copies.
- \_\_\_\_\_ If not included with the final investigation, indicate in the preliminary statement where original items of evidence are maintained, how they are being safeguarded, and the name and phone number of the responsible custodian.

Figure 6-5 -- Drafting the CI Report